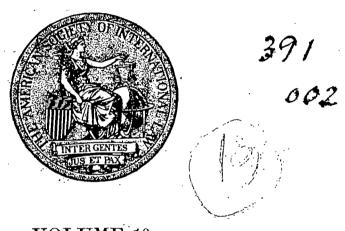
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THE OUTLOOK FOR INTERNATIONAL LAW 1

The incidents of the great war now raging affect so seriously the very foundations of international law that there is for the moment but little satisfaction to the student of that science in discussing specific rules. Whether or not Sir Edward Carson went too far in his recent assertion that the law of nations has been destroyed, it is manifest that the structure has been rudely shaken. The barriers that statesmen and jurists have been constructing laboriously for three centuries to limit and direct the conduct of nations toward each other, in conformity to the standards of modern civilization, have proved too weak to confine the tremendous forces liberated by a conflict which involves almost the whole military power of the world and in which the destinies of nearly every civilized state outside the American continents are directly at stake.

The war began by a denial on the part of a very great Power that treaties are obligatory when it is no longer for the interest of either of the parties to observe them. The denial was followed by action supported by approximately one-half the military power of Europe and is apparently approved by a great number of learned students and teachers of international law, citizens of the countries supporting the view. This position is not an application of the doctrine rebus sic stantibus which justifies the termination of a treaty under circumstances not contemplated when the treaty was made so that it is no longer justly applicable to existing conditions. It is that under the very circumstances contemplated by the treaty and under the conditions for which the treaty was intended to provide the treaty is not obligatory as against the interest of the contracting party.

This situation naturally raises the question whether executory treaties will continue to be made if they are not to be binding, and requires

¹ Opening Address by Elihu Root, as President of the American Society of International Law, at the Ninth Annual Meeting in Washington, December 28, 1915.

consideration of a system of law under which no conventional obligations are recognized. The particular treaty which was thus set aside was declaratory of the general rule of international law respecting the inviolability of neutral territory; and the action which ignored the treaty also avowedly violated the rule of law; and the defense is that for such a violation of the law the present interest of a sovereign state is justification.

It is plain that the application of such a principle to a matter of major importance at the beginning of a long conflict must inevitably be followed by the setting aside of other rules as they are found to interfere with interest or convenience; and that has been the case during the present war. Many of the rules of law which the world had regarded as most firmly established have been completely and continuously disregarded, in the conduct of war, in dealing with the property and lives of civilian non-combatants on land and sea and in the treatment of neutrals. Alleged violations by one belligerent have been asserted to justify other violations by other belligerents. The art of war has been developed through the invention of new instruments of destruction and it is asserted that the changes of conditions thus produced make the old rules obsolete.

It is not my purpose at this time to discuss the right or wrong of these declarations and actions. Such a discussion would be quite inadmissible on the part of the presiding officer of this meeting. I am stating things which whether right or wrong have unquestionably happened, as bearing upon the branch of jurisprudence to which this Society is devoted. It seems that if the violation of law justifies other violations, then the law is destroyed and there is no law; that if the discovery of new ways of doing a thing prohibited justifies the doing of it, then there is no law to prohibit. The basis of such assertions really is the view that if a substantial belligerent interest for the injury of the enemy comes in conflict with a rule of law, the rule must stand aside and the interest must prevail. If that be so, it is not difficult to reach the conclusion that, for the present at all events, in all matters which affect the existing struggle. international law is greatly impaired. Nor can we find much encouragement to believe in the binding force of any rules upon nations which observe other rules only so far as their interest at the time prompts them.

Conditions are always changing, and a system of rules which cease to bind whenever conditions change should hardly be considered a system of law. It does not follow that nations can no longer discuss questions of right in their diplomatic intercourse, but upon such a basis it seems quite useless to appeal to the authority of rules already agreed upon as just and right and their compelling effect because they have been already agreed upon.

When we recall Mansfield's familiar description of international law as "founded upon justice, equity, convenience, the reason of the thing, and confirmed by long usage," we may well ask ourselves whether that general acceptance which is necessary to the establishment of a rule of international law may be withdrawn by one or several nations, and the rule be destroyed by that withdrawal, so that the usage ceases and the whole subject to which it relates goes back to its original status as matter for new discussion as to what is just, equitable, convenient and reasonable.

When this war is ended, as it must be some time, and the foreign offices and judicial tribunals and publicists of the world resume the peaceable discussion of international rights and duties, they will certainly have to consider not merely what there is left of certain specific rules, but also the fundamental basis of obligation upon which all rules depend. The civilized world will have to determine whether what we call international law is to be continued as a mere code of etiquette, or is to be a real body of laws imposing obligations much more definite and inevitable than they have been heretofore. It must be one thing or the other. Although foreign offices can still discuss what is fair and just and what is expedient and wise, they can not appeal to law for the decision of disputed questions unless the appeal rests upon an obligation to obey the law. What course will the nations follow?

Vague and uncertain as the future must be, there is some reason to think that after the terrible experience through which civilization is passing there will be a tendency to strengthen rather than abandon the law of nations. Whatever the result may be, the world will have received a dreadful lesson of the evils of war. The sacrifice of millions of lives, millions homeless and in poverty, industry and commerce destroyed, overwhelming national debts,—all will naturally produce a

strong desire to do something that will prevent the same thing happening again.

While the war has exhibited the inadequacy of international law, so far as it has yet developed, to curb those governmental policies which aim to extend power at all costs, it has shown even more clearly that little reliance can be placed upon unrestrained human nature, subject to specific temptation to commit forcible aggression in the pursuit of power and wealth. It has shown that where questions of conduct are to be determined under no constraint, except the circumstances of the particular case, the acquired habits of civilization are weak as against the powerful, innate tendencies which survive from the countless centuries of man's struggle for existence against brutes and savage foes. The only means yet discovered by man to limit those tendencies consist in the establishment of law, the setting up of principles of action and definite rules of conduct which can not be violated by the individual without injury to himself. That is the method by which the wrongs naturally flowing from individual impulse within the state have been confined to narrow limits. That analogy, difficult as it is to maintain in view of the differences between the individual who is subject to sovereignty and the nation which is itself sovereign, indicates the only method to which human experience points to avoid repeating the present experience of these years of war consistently with the independence of nations and the liberty of individuals. The Pax Romana was effective only because the world was subject to Rome. The Christian Church has been urging peace and good-will among men for nineteen centuries, and still there is this war. Concerts of Europe and alliances and ententes and skilful balances of power all lead ultimately to war. Conciliation, good-will, love of peace, human sympathy, are ineffective without institutions through which they can act. Only the possibility of establishing real restraint by law seems to remain to give effect to the undoubted will of the vast majority of mankind.

In the effort to arrange the affairs of the world so that they will not lead to another great catastrophe, men will therefore turn naturally towards the re-establishment and strengthening of the law of nations. How can that be done? How can the restraints of law be made more effective upon nations?

It is not difficult to suggest some things which will tend in that direction.

Laws to be obeyed must have sanctions behind them; that is to say, violations of them must be followed by punishment. That punishment must be caused by power superior to the law breaker; it can not consist merely in the possibility of being defeated in a conflict with an enemy; otherwise there would be no law as between the strong and the weak. Many states have grown so great that there is no power capable of imposing punishment upon them except the power of collective civilization outside of the offending state. Any exercise of that power must be based upon public opinion. It can not rest merely upon written agreements or upon the accidental dictates of particular interests. It must proceed from general, concurrent judgment and condemnation. When that exists, punishment may be inflicted either by the direct action of governments, forcible or otherwise, or by the terrible consequences which come upon a nation that finds itself without respect or honor in the world and deprived of the confidence and good-will necessary to the maintenance of intercourse. Without such an opinion behind it no punishment of any kind can be imposed for the violation of international law.

For the formation of such a general opinion, however, questions of national conduct must be reduced to simple and definite form. Occasionally there is an act the character of which is so clear that mankind forms a judgment upon it readily and promptly, but in most cases it is easy for the wrongdoer to be cloud the issue by assertion and argument and to raise a complicated and obscure controversy which confuses the judgment of the world. There is but one way to make general judgment possible in such cases. That is by bringing them to the decision of a competent court which will strip away the irrelevant, reject the false, and declare what the law requires or prohibits in the particular case. Such a court of international justice, with a general obligation to submit all justiciable questions to its jurisdiction and to abide by its judgment, is a primary requisite to any real restraint of law.

When we come to consider the working of an international court, however, we are forced to realize that the law itself is in many respects imperfect and uncertain. There is no legislature to make laws for nations. There is no body of judicial decisions having the effect of prec-

edent to declare what international laws are. The process of making . international law by usage and general acceptance has been necessarily so slow that it has not kept pace with the multiplying questions arising in the increasing intercourse of nations. In many fields of most fruitful controversy different nations hold tenaciously to different rules, as, for recent example, upon the right of expatriation, upon the doctrine of continuous voyages; upon the right to transfer merchant vessels after the outbreak of a war. Yet any attempt to maintain a court of international justice must fail unless there are laws for the court to administer. Without them the so-called court would be merely a group of men seeking to impose their personal opinions upon the states coming before them. The lack of an adequate system of law to be applied has been the chief obstacle to the development of a system of judicial settlement of international disputes. This is well illustrated by the history of the Second Hague Conference treaty for an international prize court. The Conference agreed to establish such a court and provided in Article 7 of the treaty that in the absence of special treaty provisions governing the case presented "the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity." When the question of ratifying this treaty was presented to the Powers whose delegates had signed it, some of them awoke to the fact that upon many subjects most certain to call for the action of a court there was no general agreement as to what the rules of international law were, and that, different nations had different ideas as to what justice and equity would require and that each judge would naturally follow the views of his own country. Accordingly the Conference of London was called, and met in December, 1908. In that Conference the delegates of the principal maritime Powers came to agreement upon a series of questions and they embodied their agreement in the 71 articles of the Declaration of London. If that Declaration had been ratified by all the Powers in the Conference it would doubtless have been accepted as a statement of the international law upon the subjects covered. But it was not ratified, and so the prize court treaty remains ineffective because the necessary basis for the action of the court is wanting.

It is plain that in order to have real courts by which the legal rights

of nations can be determined and the conduct of nations can be subjected to definite tests, there must be a settlement by agreement of old disputes as to what the law ought to be and provision for extending the law over fields which it does not now cover. One thing especially should be done in this direction. Law can not control national policy, and it is through the working of long-continued and persistent national policies that the present war has come. Against such policies all attempts at conciliation and good understanding and good-will among the nations of Europe have been powerless. But law, if enforced, can control the external steps by which a nation seeks to follow a policy, and rules may be so framed that a policy of aggression can not be worked out except through open violations of law which will meet the protest and condemnation of the world at large, backed by whatever means shall have been devised for law enforcement.

There is another weakness of international law as a binding force which it appears to me can be avoided only by a radical change in the attitude of nations towards violations of the law.

We are all familiar with the distinction in the municipal law of all civilized countries between private and public rights and the remedies for the protection or enforcement of them. Ordinary injuries and breaches of contract are redressed only at the instance of the injured person, and other persons are not deemed entitled to interfere. It is no concern of theirs. On the other hand, certain flagrant wrongs the prevalence of which would threaten the order and security of the community are deemed to be everybody's business. If, for example, a man be robbed or assaulted, the injury is deemed not to be done to him alone but to every member of the state by the breaking of the law against robbery or against violence. Every citizen is deemed to be injured by the breach of the law because the law is his protection and if the law be violated with impunity his protection will disappear. Accordingly, the government, which represents all its citizens, undertakes to punish such action even though the particular person against whom the injury was done may be content to go without redress.

Up to this time breaches of international law have been treated as we treat wrongs under civil procedure, as if they concerned nobody except the particular nation upon which the injury was inflicted and the nation

inflicting it. There has been no general recognition of the right of other nations to object. There has been much international discussion of what the rules of law ought to be and the importance of observing them in the abstract, and there have been frequent interferences by third parties as a matter of policy upon the ground that specific, consequential injury to them might result from the breach, but, in general, states not directly affected by the particular injury complained of have not been deemed to have any right to be heard about it. It is only as disinterested mediators in the quarrels of others or as rendering good offices to others that they have been accustomed to speak if at all. Until the First Hague Conference that form of interference was upon sufferance. Convention for the Pacific Settlement of International Disputes, concluded at that Conference, it was agreed that, in case of serious trouble or conflict, before an appeal to arms the signatory Powers should have recourse to the good offices or mediation of foreign Powers, and Article 3 also provided:

Independent of this recourse, the signatory Powers recommend that one or more Powers strangers to the dispute should on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the states at variance. Powers strangers to the dispute have a right to offer good offices or mediation even during the course of hostilities. The exercise of this right can never be regarded by one or other of the parties in conflict as an unfriendly act.

These provisions are a considerable step towards a change in the theory of the relation of third Powers to an international controversy. They recognize such an independent interest in the prevention of conflict as to be the basis of a right of initiative of other Powers in an effort to bring about a settlement. It still remains under these provisions, however, that the other Powers assert no substantive right of their own. They are simply authorized to propose an interference in the quarrels of others to which they are deemed to be strangers. The enforcement of the rules of international law is thus left to the private initiative of the country appealing to those rules for protection, and the rest of the world has in theory and in practice no concern with the enforcement or non-enforcement of the rules.

If the law of nations is to be binding, if the decisions of tribunals

charged with the application of that law to international controversies are to be respected, there must be a change in theory, and violations of the law of such a character as to threaten the peace and order of the community of nations must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation. When a controversy arises between two nations, other nations are indeed strangers to the dispute as to what the law requires in that controversy, but they can not really be strangers to a dispute as to whether the law which is applicable to the circumstances shall be observed or violated. Next to the preservation of national character, the most valuable possession of all peaceable nations, great and small, is the protection of those laws which constrain other nations to conduct based upon principles of justice and humanity. Without that protection there is no safety for the small state except in the shifting currents of policy among its great neighbors, and none for a great state, however peaceable and just may be its disposition, except in readiness for war.

International laws violated with impunity must soon cease to exist and every state has a direct interest in preventing those violations which if permitted to continue would destroy the law. Wherever in the world the laws which should protect the independence of nations, the inviolability of their territory, the lives and property of their citizens, are violated, all other nations have a right to protest against the breaking down of the law. Such a protest would not be an interference in the quarrels of others. It would be an assertion of the protesting nation's own right against the injury done to it by the destruction of the law upon which it relies for its peace and security. What would follow such a protest must in each case depend upon the protesting nation's own judgment as to policy, upon the feeling of its people and the wisdom of its governing body. Whatever it does, if it does anything, will be done not as a stranger to a dispute or as an intermediary in the affairs of others, but in its own right for the protection of its own interest. Upon no other theory than this can the decisions of any court for the application of the law of nations be respected, or any league or concert or agreement among nations for the enforcement of peace by arms or otherwise be established, or any general opinion of mankind for the maintenance of law be effective.

Can any of these things be done? Can the law be strengthened and made effective? Imperfect and conflicting as is the information upon which conjecture must be based, I think there is ground for hope that from the horrors of violated law a stronger law may come. It was during the appalling crimes of the Thirty Years' War that Grotius wrote his De Jure Belli ac Pacis and the science of international law first took form and authority. The moral standards of the Thirty Years' War have returned again to Europe with the same dreadful and intolerable consequences. We may hope that there will be again a great new departure to escape destruction by subjecting the nations to the rule of law. The development and extension of international law has been obstructed by a multitude of jealousies and supposed interests of nations each refusing to consent to any rule unless it be made most favorable to itself in all possible future contingencies. The desire to have a law has not been strong enough to overcome the determination of each nation to have the law suited to its own special circumstances; but when this war is over the desire to have some law in order to prevent so far as possible a recurrence of the same dreadful experience may sweep away all these reluctances and schemes for advantage and lead to agreement where agreement has never yet been possible. It often happens that small differences and petty controversies are swept away by a great disaster, deep feeling, and a sense of common danger. If this be so, we can have an adquate law and a real court which will apply its principles to serious as well as petty controversies, and a real public opinion of the world responding to the duty of preserving the law inviolate. If there be such an opinion it will be enforced. I shall not now inquire into the specific means of enforcement, but the means can be found. It is only when opinion is uncertain and divided or when it is sluggish and indifferent and acts too late that it fails of effect. During all the desperate struggles and emergencies of the great war the conflicting nations from the beginning have been competing for the favorable judgment of the rest of the world with a solicitude which shows what a mighty power even now that opinion is.

Nor can we doubt that this will be a different world when peace comes. Universal mourning for the untimely dead, suffering and sacrifice, the triumph of patriotism over selfishness, the long dominance of deep and serious feeling, the purifying influences of self-devotion, will surely have

changed the hearts of the nations, and much that is wise and noble and for the good of humanity may be possible that never was possible before.

Some of us believe that the hope of the world's progress lies in the spread and perfection of democratic self-government. It may be that out of the rack and welter of the great conflict may arise a general consciousness that it is the people who are to be considered, their rights and liberties to govern and be governed for themselves rather than rulers' ambitions and policies of aggrandizement. If that be so, our hopes will be realized, for autocracy can protect itself by arbitrary power, but the people can protect themselves only by the rule of law.

ELIHU ROOT.

SOME QUESTIONS OF INTERNATIONAL LAW IN THE EUROPEAN WAR ¹

IX

DESTRUCTION OF NEUTRAL MERCHANT VESSELS

The history of the naval operations of the present war is quite without parallel, not only on account of the large number of enemy merchant vessels that have been destroyed without warning and the consequent loss of life of both neutral and non-combatant persons,² but also because of the destruction on a large scale of ships of neutral Powers. According to the press dispatches, about one hundred and fifty neutral merchantmen, American, Danish, Dutch, Greek, Italian, Norwegian, Portuguese, and Swedish, have already been sunk by one or another belligerent—in most cases by German cruisers and submarines.³ The merchant marines of Denmark, Holland, Norway, and Sweden have been the heaviest sufferers. In a few cases the destruction was the re-

- ¹ Continued from the January, April, July and October (1915) numbers of this Journal.
 - ² Discussed in the July number of this Journal, pp. 594-626.
- ³ Senator Nelson of Minnesota in a speech in the Senate on January 20, 1916 (Cong. Record, pp. 1461-1465) stated that the total number of Dutch, Danish, Swedish, and Norwegian merchant ships that had been sunk by submarines, mines and cruisers since the beginning of the war was one hundred and thirty-four. This, of course, did not include the American, Spanish, Portuguese and other neutral ships that have been destroyed. Of the one hundred and thirty-four neutral vessels thus destroyed, one hundred and three, according to Senator Nelson, were sunk by German submarines, and the rest by either German or British mines. Eleven of these were Dutch, fifteen were Danish, twenty-seven were Swedish, and eighty-one were Norwegian. Senator Nelson's speech contains a list of the ships destroyed, with the date and in most cases their tonnage. According to a statement of the British Admiralty made in July last, German submarines had up to that time destroyed ninetyeight British merchant vessels and "no less than ninety-five neutral merchantmen." As there are more British than neutral merchantmen plying the seas, it will be seen that the toll taken of neutral shipping has been relatively larger than that taken of the merchant marine of Germany's chief enemy.

sult of error due to the alleged inability of the captor to distinguish the markings of the vessel, but in the majority of cases the reason alleged was that the ships were carrying contraband of war. In view of the extensive and unprecedented scale upon which this practice has been resorted to during the present War, the conditions under which the destruction by belligerents of neutral merchant vessels is permissible, if at all, well merit consideration in the light of international law and practice. Mr. Thomas Baty, an English authority of high standing, writing in 1911, thus states the practice of the past:

It is surely very remarkable, that in all the history of war up to the twentieth century not a single instance can be adduced of a neutral ship's being destroyed on the high seas. Surely it is most significant that despite the utmost temptations and the fiercest stress of conflict, belligerents uniformly and scrupulously abstained from the least interference with neutral vessels, beyond ascertaining their characters and bringing them into port. French, Americans, Spaniards, Dutch, Danes—strict navy men and lax privateers—polished admirals and rough desperadoes—none of them dared send to the bottom a ship wearing the flag of a neutral state.⁴

Again he says:

Let the reader think of the dozens of wars, small and great, of the past two centuries: of the Russo-Turkish, the Franco-German, the Crimean, the British-American, the Napoleonic, the French Revolutionary, the American Civil, wars—to name only the greatest and latest. Let him reflect on the numberless occasions on which a cruiser's commander must have longed to send a suspicious neutral to the bottom, and must have paced his quarter-deck, consumed by impatience to set the torch to her cargo. And yet there is no instance of this having been done.⁵

Mr. Baty admits, however, that there have been a few exceptions, real or apparent, to this general practice. Thus during the Napoleonic Wars four American merchantmen (the Acteon, the Rufus, the Felicity, and the William) were sunk by "over-zealous" British captains; but, in fact, he claims, they were not neutral ships at all, but hostile vessels, because they flew the enemy's ensign and were prima facie liable to destruction. Not even the "corsair" Semmes was "imbecile" enough,

[·] Britain and Sea Law, p. 2.

⁵ Ibid, p. 23.

he adds, to destroy neutral ships and alienate neutral sympathy. Semmes destroyed only enemy ships and then only after saving their crews and passengers.6 There is, it is believed, no record of the destruction by a belligerent of a neutral ship on the high seas during the Crimean War or American Civil War or the Franco-German War,7 the Spanish-American War,8 the Boer War, the Turco-Italian War,9 or the Balkan Wars. The first war in which the right to destroy neutral vessels was asserted and exercised on a considerable scale was that between Russia and Japan in 1904-05. During this war, Russian naval commanders destroyed eight neutral merchantmen: the Knight Commander, the Hipsang, the Saint Kilda, the Oldhamia, the Ikhona, the They were all English Thea, the Tetartos and the Princess Marie. ships, except the Thea and the Tetartos, which were German, and the Princess Marie, which was Danish. In every case, it appears, the crew, the passengers and the mails were taken off and there was no loss of life, except that several persons were killed by the gun-fire directed against the Hipsang while the ship was attempting to escape, and a Chinese woman and boy were drowned. The destruction of this vessel may be distinguished from the others for the reason that it was not a case of the sinking of a vessel for carrying contraband, but the destruction of a ship for refusing to stop after repeated warning shots and for attempting to escape. The case of the Oldhamia, likewise, belongs in a class by itself. It had been captured and while in charge of a prize crew was stranded, and it being impossible to float it, the captor fearing that delay might lead to its recapture, sank it. It was not, therefore, the willful destruction of a prize; but of a wreck. The other ships were sunk because their cargoes were alleged to be contraband, and owing

^a See his own testimony in Service Afloat, p. 535, the truth of which is confirmed by the Solicitor of the United States Navy during the Civil War, Bolles, in the Atlantic Monthly, Vol. 30, p. 50.

⁷ Six British ships were destroyed in the Seine by the Germans in 1870, but, as Baty adds, (op. cit., p. 24) this was no violation of the law of nations because a neutral vessel venturing into France at the time was subject to the risks of war.

^{*}There were a few cases of capture of neutral prizes during the war with Spain, but none were destroyed. Cf. Benton, International Law and Diplomacy of the Spanish American War, pp. 205–209.

Coquet, La Guerre Italio-Turque, Rev. Gén. de Droit Int. Pub., Vol. 21 (1914), p. 40.

to their proximity to enemy ports, the danger of recapture, and the lack of a sufficient supply of coal, it was regarded as impossible to take them in for adjudication. In several cases the Supreme Court of Russia held that the prizes destroyed were not liable to condemnation, and compensation was awarded. In one case, that of the *Cilumun*, the cargo was jettisoned, and the ship spared from destruction. Why this procedure was not followed in the other cases does not appear.

The Russian naval prize regulations, prepared in 1895, 12 authorize the destruction of prizes in certain cases. Article 21 reads as follows:

In exceptional cases, when the preservation of a captured vessel appears impossible on account of her bad condition or entire worthlessness, the danger of her recapture by the enemy or the great distance or blockade of ports, or else on account of the danger threatening the ship which has made the capture, or the success of her operations, it is permissible for the commander, on his own responsibility, to burn or sink the captured vessel, after he has taken off all persons on board, and as much of the cargo as possible, and arranged for the safety of the vessel's papers and any other objects which may be necessary for throwing light on the case at the inquiry to be instituted in accordance with the procedure in prize cases.

It will be noted that no distinction is made between enemy vessels and neutral vessels; both are liable to destruction under the same conditions. In consequence, however, of the protest of the English Government against the destruction of neutral vessels, the Russian Government in August, 1905, gave instructions to its naval commanders that in the future neutral merchantmen laden with contraband were not to be sunk "except in case of direct necessity."

The prize regulations of various other states likewise authorize destruction of prizes in exceptional cases, and some of them make no dis-

- ¹⁰ Notably in the cases of the *Ikhona* and the *Tetartos*, the latter being destined to a neutral port and, therefore, not liable to capture, because Russia did not recognize the doctrine of continuous voyage.
- ¹¹ The facts concerning the destruction of neutral prizes by the Russians have been taken from the texts of the prize court decisions in each case, as printed in-Hurst and Bray's Russian and Japanese Prize Cases, Vol. I (1912), and from Takahashi's International Law Applied to the Russo-Japanese War, pp. 310–33. There is also a summary in Baty's Britain and Sea Law, pp. 7–21.
 - 12 The full text is printed in Hurst and Bray, op. cit., pp. 311-331.

tinction between enemy and neutral vessels.¹³ Thus the American instructions to blockading vessels and cruisers in 1898 (Art. 28) provided that

If there are controlling reasons why the vessels may not be sent in for adjudication, as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold; and if this can not be done they may be destroyed. The imminent danger of recapture would justify destruction if there was no doubt that the vessel was good prize. But in all such cases all the papers and other testimony should be sent to the prize court in order that a decree may be entered.

As was the case with the Russian regulations, no distinction was made between enemy and neutral prizes. Whether it was intended to authorize the destruction of neutral merchantmen in any case may be doubted. In fact, no merchant vessels, either enemy or neutral, were destroyed during the war with Spain.

The Japanese regulations of 1904 (Art. XCI) authorized the destruction of "captured" vessels when it was "unavoidable," or when the vessels were unseaworthy, when there was danger of recapture, or when the captor was unable to spare a prize crew without endangering his own safety. But before destroying the vessel, the commander was required to trans-ship all persons on board, and as far as possible, the cargo, and preserve all papers and documents. ¹⁴ No distinction was made in the Japanese regulations between enemy and neutral vessels, but in fact no neutral ships were destroyed by Japanese naval commanders. ¹⁵

The prize regulations of France in 1870 likewise authorized the destruction of neutral vessels "when their preservation endangers the safety or success" of the operations of the captor, but naval commanders were directed to use the right of destruction with the greatest reserve. ¹⁶

The British Naval Prize Manual of 1888, however, advised the destruction of enemy vessels only, and directed naval commanders to release

¹³ For the texts of the prize regulations of the more important states governing the destruction of neutral prizes, see International Law Situations, 1905, pp. 64–68; 1907, pp. 77ff.

¹⁴ The Japanese regulations are printed in Takahashi, pp. 778-789.

¹⁶ See the list of vessels destroyed and captured during the Russo-Japanese War in Takahashi, pp. 75–283.

¹⁶ Snow, Cases on International Law, p. 577.

 neutral prizes which, owing to their unseaworthiness or the inability of the captor to spare a prize crew, could not be sent in for adjudication.

In November, 1914, the British and French Governments signed a convention relating to the disposition of prizes taken by the naval forces of the allied governments, and accompanying the convention were certain instructions to British and French naval commanders in respect to the formalities to be observed in capturing prizes and the taking of them in, but nothing is said in regard to the right of destruction.¹⁷

The French Government, by a decree of August 25, 1914, modified by a decree of November 6, 1914, put into effect the Declaration of London (Art. 49 of which allows the destruction of neutral prizes when they cannot be taken in without danger to the captor ship or to the success of the military operations in which it is engaged), with certain modifications and additions, none of which, however, relate to the disposition of prizes. The British Government put the Declaration of London into operation with substantially the same additions and modifications. Great Britain and France, therefore, bound themselves not to destroy neutral prizes except in the cases authorized by the Declaration of London. In no case, it is believed, have the naval commanders of either belligerent deliberately destroyed a neutral merchantman during the present war for carrying contraband or for other reasons.

The German prize code of 1909, first made public on August 3, 1914, recognizes the right to destroy neutral vessels for carrying contraband, for breach of blockade or for unneutral service, if the taking of the ship into port would subject the capturing ship to danger or impede the success of its operations; for example, if the captured vessel is unseaworthy, or unable to follow the captor, lacks a sufficient supply of coal or is near the enemy's coast, or if the captor is unable to provide a prize crew (Art. 113). In all such contingencies it is assumed that the taking of the prize in would interfere with the success of the naval operations of the captor or would expose his ship to danger. ¹⁹ The right of destruction recognized by the German code is, therefore, somewhat broader than

¹⁷ See the text of the convention and the instructions in the *Rev. Gén. de Droit Int. Pub.*, Jan.-June, 1915, pp. 35–38.

¹⁸ See, ibid., pp. 23-35, for the text of the French decrees.

¹⁶ Huberich, The Prize Code of the German Empire as in Force July 1, 1915, p. 66.

that allowed by the Declaration of London, since the latter does not admit the right of destruction for inability to spare a prize crew, or for lack of a sufficient coal supply or because of proximity to the enemy's coasts. Nevertheless, they might all be brought by a liberal interpretation within the purview of the Declaration, since it could fairly be claimed that the existence of these circumstances in any case would either involve danger to the captor or impede his operations were an attempt made to take the ship into a home port. Article 116 of the German prize code provides, however, that before destroying a prize the commander shall take off the papers and crew and that full provision shall be made for the safety of all persons on board. This humane requirement, found in all the prize regulations which allow destruction, has, of course, been often disregarded by the commanders of German submarines during the present war, and apparently with the approval of the German Government.

The destruction of British merchantmen by Russian cruisers during the Russo-Japanese War aroused considerable indignation in England, and the legality of the destruction of the *Knight Commander*, in particular, was vigorously attacked by English publicists. The Marquis of Lansdowne, in the House of Lords, referred to the act as "a very serious breach of international law" and as an outrage against which it was necessary to protest. Mr. Balfour, speaking in the House of Commons, described it as "entirely contrary to the accepted practice of civilized nations." Similar language was used by Mr. Thomas Gibson Bowles. On a note of August 19, 1904, addressed to the British Ambassador at St. Petersburg, Lord Lansdowne said:

We understand that this right of destroying a prize is claimed in a number of cases; among others, when the conveyance of the prize to a prize court is inconvenient because of the distance of the port to which the vessel should be brought, or when her conveyance to such a port would take too much time or entail too great a consumption of coal. It is, we understand, even asserted that such a destruction is justifiable when the captor has not at his disposal a sufficient number of men from whom to provide a crew for the captured vessel. It is unnecessary to point out to your excellency the effects of a consistent application of

²⁰ Holland, Letters on War and Neutrality, p. 161; Baty, Britain and Sea Law, p. 10; and International Law Situations, 1907, p. 82, and 1911, p. 57.

these principles. They would justify the wholesale destruction of neutral ships taken by a vessel at war at a distance from her own base upon the ground that such prizes had not on board a sufficient amount of coal to carry them to a remote foreign port—an amount of coal with which such ships would probably in no circumstances have been supplied. They would similarly justify the destruction of every neutral ship taken by a belligerent vessel which started on a voyage with a crew sufficient for her own requirements only, and therefore unable to furnish prize crews for her captures. The adoption of such measures by the Russian Government could not fail to occasion a complete paralysis of all neutral commerce.²¹

Professor Holland stood almost alone among English publicists in maintaining that the destruction of neutral prizes was not absolutely prohibited by international law, under any and all circumstances. In a letter of June 29, 1905, to the London Times, he declared that "a consensus gentium to this effect will hardly be alleged by those who are aware that such sinking is permitted by the most recent prize regulations of France, Russia, Japan, and the United States" although he readily admitted that the practice should by further international agreement be absolutely forbidden.²² While it is most desirable, he said, that neutral property should not be exposed to destruction without inquiry, cases might occasionally occur in which a belligerent could hardly be expected to permit the escape of such property, though he is unable to send it in for adjudication.²³ At the time, however, the great preponderance of English opinion was against the right of destruction. Lawrence, speaking of the sinking of the Knight Commander, declared that it was not lawful to sink a neutral prize before taking it in.24 Baty, in a review of

<sup>The text of the note may be found in International Law Situations, 1905, p. 74.
The text of his letter is printed in his Letters on War and Neutrality, p. 168.</sup>

Professor Holland's position was strongly attacked by Thomas Gibson Bowles in several letters to the *Times*.

²² Neutral Duties in Maritime War, Proceedings of the British Academy, Vol. II, pp. 12–13, quoted by Moore, Digest, VII, 520.

²⁴ War and Neutrality in the East, p. 255. Lawrence maintains that a "broad line of distinction" must be drawn between the destruction of enemy property and the destruction of neutral property; in the latter case the owners have a right to insist that an adjudication upon their claims shall precede any further dealings with it and that it is far better for a captor to release a neutral ship or goods than to risk personal loss and international complications by destroying innocent property. Principles of International Law, 4th ed., p. 484. This distinction is obviously well

the Russian cases, affirms that the assertion of the right of destruction by four or five or even a larger number of governments and the resort to it in practice by one or more nations does not make the practice legal. "We trust," he concludes, "that it has been demonstrated that if there is such a thing as the law of nations at all, it forbids the sinking of neutral vessels." ²⁵ Hall likewise maintains that neutral ships or goods cannot be destroyed until they have been condemned by a prize court. Ownership of such goods, he holds, does not vest upon capture, but remains in the neutral until judgment of confiscation has been pronounced by a competent court. ²⁶ This in substance is also the view of Phillimore, ²⁷ Atlay, ²⁸ Atherly-Jones, ²⁹ Bentwich, and most of the other English authorities.

Bentwich remarks that the considerations which impel modern cruisers to destroy their enemy prizes, such as the lack of a sufficient supply of coal and the difficulty of sparing a prize crew, impel them also to sink neutral prizes, but they have not the same right in the one case as in the other. At best the neutral cargo can be destroyed by the captor only when it is absolute contraband, but the ship is not his property to deal with. So English judicial authority, like that of English text founded, both upon grounds of justice and public policy, but unfortunately most prize codes do not expressly recognize it. Cf. also, Wilson on International Law, p. 413.

Estrain and Sea Law, pp. 20, 24. Elsewhere Baty has proposed the rule that "in no case is it permissible to sink or otherwise destroy a neutral prize; but absolute contraband may be removed to another vessel or jettisoned in case of necessity" (Law Magazine, 1906)—a rule which might well be adopted as a part of the law of the sea. In an article entitled La Destruction des Prises Neutres in the Rev. de Droit Int., 2d ser., Vol. 8, p. 434 (1906), Baty maintains that the recent practice of destroying neutral prizes has been introduced without authority. The fact, he says, that "no neutral prize has ever been sunk in modern wars because of the impossibility of taking it in is proof convincing." To admit such a right is to make naval commanders the judges in such matters. Valin (Traité des Prises Maritimes), who is sometimes cited as authority for the practice, he says, never professed such an opinion; indeed none of the authors, such as Cussy, Reddie or Wheaton, who have treated the subject of capture, ever said a word in favor of it.

- 24 International Law, 5th ed., p. 735.
- "International Law, Vol. III, p. 432.
- * See his edition of Wheaton, Sec. 359e.
- [™] Commerce in War, p. 531.
- ²⁰ Law of Private Property in War on Land and Sea, p. 112. See also his Declaration of London, p. 21.

writers, has likewise denied the legality of destruction. Lord Stowell, in the case of the *Felicity*, in 1819, said:

Where it is neutral the act of destruction cannot be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own state; to the neutral it can only be justified under any circumstances by a full restitution in value. These rules are so clear in principle and established in practice that they require neither reasoning nor precedent to illustrate or support them.³¹

In the cases of the *Acteon* and the *Rufus*, American merchant vessels destroyed by British cruisers during the Napoleonic Wars, he decreed full restitution, and in the case of the *William*, whose American nationality was quite dubious, he awarded restitution without costs and damages.³² So, during the Crimean War, Dr. Lushington, while affirming the right and duty of a captor in certain cases to destroy *enemy* merchant vessels, declared that

For wholly different reasons, which I need not enter upon, where a vessel under neutral colors is detained, she has the right to be brought to adjudication, according to the regular course of proceedings in the prize court; and it is the very first duty of the captor to bring it in, if it be practicable.⁵⁵

Baty, commenting on these decisions, remarks that they have sometimes been represented as showing that Stowell and Lushington regarded it as permissible for a cruiser to sink any ship it liked upon condition of making restitution and paying damages and costs, but, in fact, he affirms, they admitted no such principle; all they were concerned with was the remedy their own court could give the owner. They were not concerned with the question of the right to destroy a neutral vessel; "in fact, they scarcely contemplated the occurrence of such an outrage; it was and had been for centuries an unheard-of thing." ³⁴ Among Continental publicists, Kleen is a vigorous opponent of the right of destruction. The destruction of neutral property is never a "necessity

- ²¹ Dodson's Admiralty Reports, Vol. II, p. 381.
- 32 Baty, Britain and Sea Law, p. 3. For a full discussion of these cases, see Smith and Sibley, Int. Law as Interpreted and Applied During the Russo-Japanese War, pp. 164–169.
 - 23 The Leucade (1855), Spink's Prize Cases, p. 221.
 - 34 Britain and Sea Law, p. 5.



of war" he says, and the captain of a cruiser who in open sea commits such an act arrogates to himself the powers of a judge,—a quality which does not belong to him. Destruction is everywhere, he adds, recognized as criminal, and in view of the almost unanimous disapprobation of the practice, it is surprising that the prize codes of some modern states, like France, Russia and the United States, should admit the right of destruction, without even expressly limiting the right to enemy prizes. Among other Continental writers who do not admit the right to destroy neutral prizes may be mentioned, Bluntschli, Nippold 37 and, apparently, de Boeck, Gessner, Gessner, and Bonfils, Taylor, University and Wheaton, among American writers, likewise deny the right to destroy neutral prizes.

There is, however, much authority in favor of the right to destroy in exceptional cases. Oppenheim 44 remarks that the practice of states

- 35 Lois et Usages de la Neutralité, t. II, p. 532.
- ** Droit International Codifié, Sec. 672. Bluntschli does not even recognize the right to destroy enemy prizes. The difficulty of finding a port into which a prize may be taken offers no justification, he says, for destruction.
- To Cited by Huberich in an article on The Destruction of Neutral Prizes, in the Illinois Law Review, for May, 1915.
- 38 De la Propriete Privée Enemie Sous Pavillon Enemie, p. 302.
- * Le Droit des Neutres Sur Mer (1876), p. 348.
- ** Droit Int. Public, Sec. 1415. There is some uncertainty as to the opinions of Boeck, Gessner and Bonfils, as they do not distinguish clearly between the destruction of enemy prizes and neutral prizes. It may at least be said, however, that they do not expressly recognize the right to destroy neutral ships.
- ⁴¹ International Public Law, p. 573. "It is generally agreed," says Taylor, "that a neutral prize should never be burned." He is, of course, in error as to such general agreement.
- ⁴³ International Law, Sec. 184. "The right to destroy," he says, "is barbarous, and ought to disappear from the law of nations," and he makes no distinction between enemy and neutral prizes.
- ⁴³ Cited by Baty (Britain and Sea Law, pp. 5–6), who calls attention to a treatise on captures written in 1815 by Wheaton, and based on the researches of Story, yet Wheaton "did not so much as advert to the possibility of destroying neutral prizes. The practice was utterly unknown and incredible to him." In his Elements of International Law, Wheaton discusses at length the disposition of prizes, but says nothing of the right to destroy either enemy or neutral prizes.
- "International Law, Vol. II, p. 471, n. 2. Calvo, Sec. 3019, states that, as a general rule, a neutral prize may not be destroyed, but that it is permissible in exceptional circumstances, as, for example, in case of "imperious military necessity" or force majeure resulting from pursuit of the enemy or inability to spare a prize

does not recognize the English rule of absolute prohibition, and he cites Geffcken, Calvo, Fiore, Martens, Dupuis, and Perels, and he might have added Rivier 45 and others, in favor of the right to destroy in certain cases. Westlake is one of the few English writers who admits the right of destruction. A neutral, he says, cannot justly complain if his property is destroyed when, if it is brought in, it would be condemned under the law of blockade or contraband. Holland, as we have seen, took the same view in 1905; and Moore, commenting upon Hall's opinion, remarks that the authorities hardly sustain it as a rule of unqualified or universal obligation.⁴⁷ The American publicist Dana ⁴⁸ maintained that necessity would justify destruction, as, for example, where the vessel is unseaworthy, or where there is danger of immediate recapture, or in the case of infectious diseases on the ship. At the time of the controversy between the British and Russian Governments over the sinking of the Knight Commander, Mr. Loomis, Acting Secretary of State of the United States, sent a telegram to Mr. Choate, American Ambassador to Great Britain (July 9, 1904), saying that the American Government considered that the sinking of the vessel was not justified by the bare fact that there was contraband on board, 49 and on July 30th the Russian Government was informed that the Government of the United States would "view with the gravest concern the application of similar treatment to American vessels and cargoes." 50 But in a subsequent telegram of August 6th to Mr. Choate, Secretary Hay stated that he was "not prepared to say that in case of imperative necessity a prize may not be lawfully destroyed by a belligerent captor." 51

In the presence of this conflicting opinion regarding the right to de-

crew. See Martens, Traité de Droit Int., Vol. III, p. 298, and Perels, Manuel de Droit Maritime (French trans. by Arendt), p. 334; and Dupuis, Le Droit de la Guerre Maritime d'aprés les Confs. de la Haye, etc., p. 368, to the same effect.

- 46 Principes du droit des Gens, Vol. II, p. 350.
- 46 International Law, Vol. II, p. 309.
- 7 Digest of Int. Law, Vol. 7, p. 523.
- ⁴⁸ Edition of Wheaton, p. 485. *Cf.* also, Wilson, International Law, p. 413, who admits that a neutral vessel may be sunk in exceptional cases, though great caution, he adds, should be taken before destroying it.
 - 49 United States Foreign Relations, 1904, p. 333.
 - 60 Ibid., p. 734.
 - 61 Ibid., p. 337.

stroy neutral prizes, the Second Hague Conference entered upon a discussion of the subject in the hope of removing the uncertainty and of securing a general agreement in respect to the conditions under which destruction should be admitted, if at all.⁵² In the proposal submitted by the British delegation, the view was expressed that the destruction of neutral prizes should be prohibited absolutely and that every neutral prize which could not be taken in for adjudication should be released.⁵³ Sir Ernest Satow defended with much ability the British proposal.⁵⁴ The destruction of neutral prizes, he said, was contrary to international law and the proposal to admit it was a dangerous innovation. The American delegation submitted a proposal identical in substance with that of the British, and it was ably sustained by General Davis upon grounds of both humanity and justice. The present construction of ships of war, he said, offers few accommodations for persons taken from captured ships, and, besides, they would be exposed to the danger of battle in a much greater degree than when fleets were constructed of wood and propelled by sail.55

In the proposal submitted by the Russian delegation, however, it was maintained that the absolute prohibition of the destruction of neutral prizes would have the effect of establishing a grave inequality between those Powers which have colonial ports in many seas, to which they might take their prizes for adjudication, and those, like Russia, which have no such facilities. The Russian delegation, therefore, proposed that the right of destruction be admitted in exceptional cases, as where the safety of the captor would otherwise be compromised or the success

⁶² The matter had been already considered by the Institute of International Law at its meeting at Turin in 1882, and the prize règlement which it adopted recognized the right to destroy prizes in certain exceptional cases. No distinction was made between neutral and enemy prizes and apparently none was intended to be made. There was some opposition, especially by the English members, to the règlement because of the failure to recognize this distinction, and at the session of 1883 the règlement was amended and the right to destroy was expressly limited to enemy prizes. The manual of maritime war adopted by the Institute at its Oxford meeting in 1913 (Art. 139) recognizes the right to destroy enemy vessels, but nothing is said in regard to the right to destroy neutral prizes (see the Annuaire of the Institute, Vol. 26, p. 348).

⁵² Deuxième Conférence International de la Paix, actes et documents, p. 1134.

⁵⁴ Ibid., pp. 903-907.

⁵⁵ Ibid., p. 1050.

of his operations would be impeded. But in all such cases the right of destruction should be exercised with the greatest reserve and only after all papers had been preserved and provision made for the safety of the passengers and crew. The Russian proposal was defended at length by Admiral Ovtchinnikow. He admitted that in principle it was preferable to take in all prizes, enemy as well as neutral, but it was often impossible to do this, and in such cases the captor could not be expected to release Suppose, for example, he said, a captor should after taking a prize find himself in close proximity to a powerful enemy and his prize, flying a neutral flag, is laden entirely with contraband of war, such as cartridges, projectiles, powder and other explosives. Certainly it would be more profitable for the captor to preserve these articles for his own use, but the taking in of the prize might be impossible by reason of the proximity of his more powerful enemy and the remoteness of his own ports which might, moreover, be effectively blockaded. In such a case, the captor should have the right to destroy.⁵⁶ His argument was reinforced by that of his colleague, Captain Behr, who contended that in certain cases the right of destruction was absolutely necessary, as where a neutral vessel laden with arms and munitions of war clearly intended for the enemy but which, for lack of coal, inability to spare a prize crew or the danger of recapture by the enemy, could not be taken in. 57. The Russian proposal was also defended by the German delegate. Herr Kriege, who asserted that the right of destruction in exceptional cases was recognized by the existing rules and practice, and that it was indispensable from the point of view of military necessity. He cited the opinion of Holland (quoted above), and of Lord Stowell in the case of the Felicity (incorrectly it is believed) in favor of the right of destruction in exceptional cases.58

Count Tornielli of Italy sought to remove the necessity for destruction by a proposal allowing prizes to be taken into neutral ports pending, sequestration by a prize court.⁵⁹ This proposal, embodied in Article 23 of the Convention Respecting the Rights and Duties of Neutral Powers

Deuxième Conférence International de la Paix, actes et documents, p. 900.

⁶⁷ Ibid., pp. 991-992.

M Ibid., pp. 992-993.

⁵⁹ Ibid., p. 903.

in Naval Warfare, represents the only achievement of the conference on the subject of destruction. Its purpose, as M. Renault pointed out, was "to render more rare or to prevent entirely the destruction of prizes." Sir Ernest Satow strongly opposed the adoption of this article, because it made no distinction between enemy and neutral prizes and allowed belligerents the right to make use of neutral ports to their peculiar advantage. The delegates of a number of the great Powers, including those of Great Britain, Japan and the United States, however, either voted against the proposal or abstained from voting, and their governments later reserved their assent to the article as adopted. Undoubtedly, if neutrals could be induced to allow belligerents this privilege, the excuse or necessity for destruction would in many cases be removed, but there is little disposition among neutrals to grant it.

The discussion of the question of the right to destroy neutral prizes was renewed at the International Naval Conference at London in 1908-09. Sir Edward Grey, in a letter of December 1, 1908, to Lord Desart, president of the British delegation, dwelt upon the desirability of an agreement which would place greater restrictions upon the right of belligerents to destroy neutral prizes. The discussions at the Hague Conference had evidently convinced the British Government of the necessity of making some concessions to those who defended the right of destruction in exceptional cases, and it did not therefore insist as in 1907 on absolute prohibition. Adverting to the fact that it was universally admitted that all prizes ought, if possible, to be taken into a prize court for adjudication. Sir Edward Grev admitted that the right to destroy enemy prizes in cases where the captor finds himself unable, without compromising his own safety or without endangering the success of his operations, or where, owing to the distance from a home port, the prize could not be taken in, was generally recognized. As to neutral prizes, Great Britain, he said, had always contended that if they could not be taken in they should be released, and that no military necessity could justify destruction. His Majesty's Government, he said, could not

²⁰ The proceedings of the Second Hague Conference in respect to the destruction of prizes are reviewed and analyzed by Dupuis in *Le Droit de la Guerre Maritime d'après Les Conférences de la Haye et de Londres*, pp. 372–382; and Lémonon, *La Seconde Conférence de la Paix*, pp. 685–694. The memoranda submitted to the Conference are analyzed in *International Law Situations* for 1911, pp. 61–68.

admit the proposition that inability to spare a prize crew was sufficient justification to destroy a vessel, for such an admission would probably be held to authorize destruction in the majority of cases where the captor had no convenient port of his own. However, His Majesty's Government might be prepared, he said, to admit the right to sink neutral prizes in case of imperative military necessity, but it was not prepared to admit that inability to spare a prize crew or the mere remoteness of a convenient neutral port constituted a military necessity which would justify such a procedure.⁶¹

Nevertheless, the memorandum submitted by the British delegation. and also that of Japan, proposed that the destruction of neutral vessels be prohibited in all cases whatsoever.⁶² The proposals submitted by the other delegations, while admitting the general principle that neutral ships ought to be taken in for adjudication, nevertheless affirmed the right of a belligerent to destroy in exceptional cases. The German memorandum proposed to recognize the right in cases where the taking in would compromise the safety of the captor or the success of his operations. 63 The memorandum of the American delegation proposed the rules of the Naval Code of 1900, Article 50 of which permitted destruction where there were controlling reasons why vessels should not be sent in for adjudication, such as unseaworthiness, the existence of infectious diseases, or the lack of a prize crew or imminent danger of recapture.⁶⁴ The Austro-Hungarian memorandum stated that absolute prohibition was desirable; that belligerents should be allowed to take their prizes into neutral ports pending sequestration, and that they should be required to do this in all cases except where it would compromise the safety of the captor or the success of his operations.⁶⁵ The French memorandum proposed to authorize destruction only when the taking of the prize in would compromise the safety of the captor or the success of his operations, as, for example, where he could not spare a prize crew, but in every such case the right of destruction should be exercised

⁶¹ Proceedings of the International Naval Conference, House of Commons Sessional Papers, Misc. No. 4, Vol. 54 (1909), p. 28.

⁶² Ibid., No. 5, p. 38.

⁵³ Ibid., p. 6.

⁶⁴ Ibid., pp. 8-16.

⁶⁵ Ibid., p. 21.

with the greatest reserve.⁶⁶ The memorandums submitted by the delegations of the other Powers proposed to recognize the right of destruction under essentially similar conditions.⁶⁷

The discussion of the question was very full, especially by the delegates having technical knowledge of the methods of naval warfare. The British delegation reaffirmed the views of the British Government in 1907; but, realizing that if any agreement was reached the right to destroy in exceptional cases would have to be admitted, they directed their efforts toward obtaining adequate safeguards against the abuse of the right and provision for due reparation to injured neutrals. The Russian and German delegates defended the right of destruction, as in 1907. The American delegates admitted that in certain cases it might be impossible for a captor to take a prize in, and that imperative military necessity might require destruction. But Admiral Stockton expressed the fear that unless the conditions under which the right of destruction was admitted were strictly defined, the practice of destroying prizes would become the rule instead of the exception.

The rule finally adopted by the Conference affirmed the general principle that a neutral vessel cannot be destroyed, but must be taken in for adjudication by a prize court. Nevertheless, by way of exception, the right of destruction was admitted in cases where conveyance of the prize ship to port would involve danger to the captor or to the success of the military operations in which he was at the time engaged (Art. 49). The effort of the British delegation to obtain express recognition of the rule that mere inability to spare a prize crew did not constitute a sufficient justification for destruction failed to receive the approval of the Conference, it being regarded as unwise to undertake the enumeration of any particular contingencies which should constitute an element of danger. But, according to the Declaration, only neutral vessels which are liable to condemnation by a prize court may be destroyed. Not every ship,

⁶⁸ Proceedings of the International Naval Conference, House of Commons Sessional Papers, Misc. No. 4, Vol. 54 (1909), p. 30.

⁶⁷ The memorandums of the several delegations are analyzed by Dupuis, op. cit., pp. 383 ff. See also, Int. Law. Sits., 1911, pp. 73–77.

²⁸ See the letter of the British delegates to Lord Desart, March 1, 1909, House of Commons Sessional Papers, Misc., No. 4 (1909), p. 98.

See the analysis and comment in Bentwich, The Declaration of London, pp. 94-95.

therefore, guilty of violating the rules in respect to contraband and blockade, is liable to destruction; for, according to Article 40 of the Declaration, a vessel carrying contraband is liable to condemnation only when more than half its cargo consists of contraband goods. In cases where contraband is carried in smaller proportions, the right of condemnation, and consequently of destruction, is not recognized. The burden of proving that he acted in the face of "exceptional necessity" was placed upon the captor, and in case he fails to produce such proof, he is bound to indemnify the parties interested (Art. 51). In case the capture is subsequently declared invalid, though the act of destruction has been held to be justifiable, the captor must pay compensation in place of the restitution to which the interested parties would have been entitled (Art. 52).

Article 50 of the Declaration took care, however, to provide that before destruction in any case all persons on board must be placed in safety and all the ship's papers likely to be of value in determining the validity of the capture must be preserved.

While the rules adopted by the Conference represented a compromise between two conflicting views, they undoubtedly provided some safeguards against arbitrary destruction, and if they were strictly observed by belligerents the cases in which neutrals would be exposed to injury would probably be few. It is, of course, true that the Declaration has never been ratified in accordance with its own provisions, and is not therefore legally obligatory upon the belligerents in the present war. They have, nevertheless, put it into effect with certain modifications and additions, none of which affect substantially its rules in respect to destruction of neutral prizes, except that, as already stated, the German prize regulations expressly enumerate the contingencies which shall constitute danger to the captor or which might impede his operations, among which are inability to spare a prize crew, shortage of coal, proximity to the enemy's coasts, etc.

The right of a belligerent to destroy neutral prizes in the exceptional cases and subject to the conditions mentioned above being generally recognized, and provided for in the Declaration of London we may now inquire whether the practice during the present war has been in conformity with these rules. In most of the cases in which neutral ships have

been destroyed during the present war, the destruction was wrought by German submarines, although in a very few cases there has been doubt as to whether it was done by submarines or mines, and if by mines whether they were laid by Great Britain or by Germany. In a very few cases, like those of the *Frye*, and the *Maria* the destruction was wrought by a cruiser.

Regarding the procedure of destruction, the rule in respect to making provision for the safety of crews and passengers has not always been observed by the commanders of the German submarines, and in a number of cases persons on board have lost their lives in consequence of the failure to give warning or, in case warning was given, to allow sufficient time for the passengers and crew to save themselves. According to a statement of the British Admiralty, 1550 persons on British merchantmen had lost their lives in consequence of attacks by German submarines down to July 27, 1915, and twenty-two persons on neutral merchantmen had suffered a similar fate.

In the great majority of cases in which neutral merchantmen have been destroyed, the reason alleged, so far as appears from the press dispatches, was the presence of contraband on board the vessel; but in a number of cases the act of destruction was due, as has been said, to alleged inability of the submarine commanders to distinguish the marking of the suspected ship. It being impossible, it was claimed, for the commander to bring the vessel to, send a searching party aboard or otherwise verify its nationality, the ship was destroyed upon suspicion. Thus in the case of the American steamer Gulflight, torpedoed on May 7, 1915, without warning and with the loss of three lives, all Americans, it was alleged that the ship was convoyed by an English merchant vessel, which it was assumed was armed, and being unable to distinguish the neutral markings of the Gulflight and considering it dangerous to approach the vessel for the purpose of verifying its nationality, in view of the presence of the convoying ship of the enemy, the submarine submerged and torpedoed it.70 The destruction of the ship was, therefore,

⁷⁰ See the note of the German Minister for Foreign Affairs to the American Ambassador at Berlin, of June 1, 1915. The chief officer of the *Gulflight* in a sworn statement filed with the Department of State, declared that the ship was flying a large American ensign six by ten feet in size at the time it was torpedoed.

an "unfortunate accident" for which the German Government expressed regret and declared itself ready to make full compensation. The obvious duty of naval commanders in cases of doubt such as this is to refrain from attack; in any case, the destruction of a neutral vessel is permissible only under the most exceptional circumstances, and the naval commander who assumes to destroy where there is doubt as to the nationality of the vessel is guilty of an outrage upon the rights of neutrals and incurs the risk of involving his own government in serious controversy.

The aerial bombardment of the American steamer Cushing on April 28th, while it was on a voyage to Rotterdam, on the alleged ground that its neutral markings were not recognizable by the aviator, who mistook the ship for an enemy vessel, was another case of the kind, and for which the German Government offered to make reparation. To Still another similar case was the torpedoing on May 25, 1915, of the American vessel Nebraskan while proceeding in ballast from Liverpool to the United States. The commander of the submarine claimed to have mistaken it for an English vessel because of insufficient markings. The German Government expressed regret for the act, and offered to make compensation to the owners.72 The captain, however, testified that the ship had painted on its side in large letters the words "Nebraskan of New York," which he added, must have been seen by the submarine commander. The stopping of the American steamer Normandy on July 9th and the verification of its nationality by an examination of its papers would seem to show that it is not impossible for submarines to comply with the rules of international law governing naval warfare when their commanders are so disposed. At any rate, this is the proper procedure to be followed, and where it cannot be done without danger to the captor, he should refrain from attacking under any circumstances if there is doubt as to the enemy character of the ship.

The destruction of the American steamer *Leelanaw* by a German submarine on July 25, 1915, while the ship was proceeding with a Russian cargo of flax from Archangel to Belfast, was still another case of the kind. The crew was taken aboard the submarine without loss of life. Before

⁷¹ Communication of Herr von Jagow to Mr. Gerard, June 1, 1915.

 $^{^{72}}$ Memorandum of the German Foreign Office delivered to Mr. Gerard, July 12, 1915.

destroying the vessel, the commander of the submarine examined the ship's papers and satisfied himself of its nationality and of the character of its cargo according to the established procedure. consul general at first reported that the Leelanaw attempted to escape after it had been hailed, but the captain testified that after the first shot was fired he turned and headed for the submarine. In any case, the right to destroy for attempting to escape is admitted only after repeated attempts to evade capture or in consequence of forcible resistance. The fact that the captain submitted to search removed all reason for destruction on the ground of attempt to escape. His proposal that the cargo be jettisoned and the ship allowed to proceed was rejected by the commander of the submarine, who is reported to have replied that he was not in the habit of throwing contraband cargoes overboard. The destruction of the ship was in violation of the treaty of 1828 between Prussia and the United States, to which reference is made below, and a claim for compensation was presented to the German Government.

A case which attracted more attention than any of those above mentioned, and which was the subject of prolonged diplomatic controversy between the American and the German Governments, was the sinking of the American sailing vessel, William P. Frye, on January 28, 1915, by the German cruiser Prinz Eitel Friedrich. The Frye, while proceeding on a voyage from Seattle to Queenstown, Falmouth or Plymouth with a cargo consigned "to order" was stopped, a searching party was sent aboard, and after examining the papers, the commander directed that the cargo be thrown overboard. Subsequently, "after having tried to remove the cargo," the commander took the papers and crew aboard and sunk the ship.

In a note dated March 31, 1915, the Secretary of State, after reciting briefly the facts of the case and without entering into an argument concerning the illegality of the act, presented a bill to the German Government for \$228,059.54 to cover the value and equipment of the vessel, freight, traveling and other expenses of the captain and its agents, the personal effects of the captain and damages on account of the loss of the ship.

In a note dated April 5th, the German Government replied that the

commander had "acted in accordance with the principles of international law as laid down in the Declaration of London and the German prize regulations." The ports to which the vessel was destined, it was asserted, were "strongly fortified" and were, moreover, serving as bases for the British naval forces; consequently, the cargo was to be considered as destined for the use of the armed forces of the enemy, and since it was not possible to take the prize into a German port without exposing the captor to danger or without impeding the success of his operations, he was justified in destroying it, and this he did after taking off the papers and the crew. The question of the legality of the act, and the amount of indemnity due, if any, would in due course be submitted to a German prize court for determination in accordance with the Declaration of London and the code of German prize procedure, and there the owners would be given an opportunity to present evidence that the destination of the cargo was innocent. If such proof were not adduced, the German Government would not, according to the general principles of international law, be liable for any compensation whatsoever; but in view of the provisions of Article 13 of a treaty between Prussia and the United States of July 11, 1799, taken in connection with Article 12 of the treaty of May 1, 1828, "which as a matter of course were binding on the German prize courts," the American owners would receive compensation even if the court should find that the cargo consisted of contraband. Proceedings by the prize court, it was added, were necessary not only to pronounce on the legality of the act, but also to determine the standing of the claimants and the amount of the indemnity.

The American Government replied in a note of April 28th, saying that it would be "inappropriate" in the circumstances and would involve unnecessary delay to adopt the suggestion of the German Government that the questions referred to above should be submitted to a prize court. Unquestionably, the note added, the destruction of the Frye was a violation of the treaty obligations of Germany, the German Government had already admitted its liability, and the status of the claimants and the amount of the indemnity were appropriate matters for settlement by diplomatic negotiation. In view of the admission of liability by reason of treaty stipulations, it was unnecessary to enter into a discussion of the meaning and effect of the Declaration of London, which

had been given considerable prominence in the German note of April 5th.

To this note the German Government replied on June 7th, disclaiming having admitted that the destruction of the *Frye* was a violation of the treaties of 1799 and 1828. The treaty of 1799, it was argued, expressly reserved the right to stop and to detain contraband; it followed, therefore, that if it could not be stopped in any other way than by destruction of the ship carrying it, that mode of procedure was permissible, and whatever the mode of procedure adopted, it must be passed on by the prize court.

The Secretary of State of the United States replied at some length in a note of June 24, in which he stated that the American Government could not concur in the conclusions of the Imperial Government. The only question at issue was the method to be adopted for ascertaining the amount of the indemnity to be paid under an admitted liability, and he noted with surprise that the Imperial Government desired to raise in addition questions regarding the meaning and effect of the treaty provisions under which it had admitted its liability. The view put forward by the German Government in its last note that the treaty recognized, at least by indirection, the right to destroy a neutral prize, was denied, and again it was asserted that prize proceedings for the purpose of determining the amount of the indemnity were inappropriate. The Secretary of State then quoted Article 13 of the treaty of 1799, which, by its express terms, prohibits not only destruction, but even detention. This article reads as follows:

In the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

That the master of the *Frye* undertook to jettison the cargo, but before it was completed the commander of the German cruiser sank the vessel, had been fully admitted by the German Government. Attention was also called to Article 12 of the treaty of 1785 which, like Article 13 of the treaty of 1799, was continued in force by Article 12 of the treaty of 1828. This article reads as follows:

. If one of the contracting parties should be engaged in war with any other Power, the free intercourse and commerce of the subjects or citizens of the party remaining neuter with the belligerent Powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other.

Adverting to the statement in the German note of June 7th that in the event the prize court should not grant indemnity in accordance with the treaty stipulations the German Government would nevertheless make compensation, the Secretary of State called attention to the fact that the Government of the United States might not be satisfied with the amount, and that even if the prize court awarded an indemnity it would not be binding on the United States. It seemed more appropriate, therefore, that the amount be determined then and not later, by diplomatic negotiation.

The German Government replied to this communication in a note of July 30th, declining to accept the American interpretation of the treaty and again insisting that the commander of the Eitel acted within his legal rights in sinking the Frye. It was not disputed by the American Government, said Herr von Jagow, that under the general principles of international law a belligerent is authorized to sink neutral vessels under almost any conditions for carrying contraband, and this right is recognized by Articles 49 and 50 of the Declaration of London, the ratification of which the American Government had proposed to the European beligerents at the beginning of the war. More than half the cargo was contraband; it was destined for the use of the armed forces of the enemy; and an attempt to take the ship into a German port would have imperiled the Eitel and defeated the success of its operations. Referring again to the treaty stipulations, he pointed out that the right of destruction was not mentioned and was therefore neither expressly permitted nor prohibited, and the treaty stipulations must be supplemented by the general rules of international law. The provisions relating to the delivering out of the cargo could have no application when the time required exposed the captor ship to danger or impeded the success of its

operations. In the case of the Frye, the commander had endeavored to throw the cargo overboard, but being convinced that it was impracticable owing to the danger to which he was exposed from the pursuit of enemy warships, he was obliged to destroy his prize. The question of legality, he concluded, had been submitted to a prize court on July 10th; the court had rendered a decision to the effect that the cargo was contraband, that the Frye could not be taken in and that in consequence the sinking was justified. At the same time the court had recognized the "validity" of the treaty stipulations, but was unable to fix the amount of indemnity itself since it did not have the necessary data before it. Thus it came to pass that while the negotiations were in progress the German Government was able to carry its point and have the question passed upon by a prize court, as it had all along insisted must be done. But the amount of indemnity remained to be determined. With this end in view, the German Government suggested that each party select an expert and that the two acting jointly should determine the amount, which the German Government would promptly pay. But it was expressly declared that such payment was not to be understood as constituting a satisfaction for the violation of American treaty rights, but a duty or policy founded on existing treaty stipulations. Should this mode of settlement not be acceptable to the American Government, it was suggested that the question of the interpretation of the treaty provisions in dispute be submitted to the Hague Tribunal.

The American Government, regarding a further exchange of views on the question as unprofitable, accepted in principle the German suggestion, but proposed that the two alternative modes of settlement be combined, so that the question of the amount of the indemnity might be submitted to joint experts and the dispute regarding the interpretation of the treaty stipulations be arbitrated in accordance with Article 38 of the Hague Convention for the Pacific Settlement of International Disputes. Likewise, the German suggestion that payment made under the arrangement should not be considered as an admission that American treaty rights had been violated was accepted, subject to the understanding that acceptance of such payment should not be construed as an admission by the United States that the sinking of the *Frye* was legally justifiable.

• These suggestions were promptly accepted by the German Government, which at the same time named the expert to act in its behalf. The American Government having inquired whether, pending the arbitral award, the Imperial Government would conduct its naval operations in accordance with its own interpretation of the treaty or that of the United States, the Imperial Government replied that, although Germany would suffer disadvantages from following the American interpretation, the government had as a mark of its conciliatory attitude instructed its naval commanders not to destroy in future American vessels laden with conditional contraband even when the "conditions of international law are present," but on the other hand, the right to destroy those carrying absolute contraband must be reserved.

In a note dated October 12, 1915, the Secretary of State agreed to the proposal of the German Government, but he suggested that there should be an understanding that in case the joint experts could not agree on the amount of the indemnity, or in case it could not be settled by diplomatic negotiations, the question should be referred to an umpire if the government of the United States should so desire. Regarding the suggestion of the German Government that it must reserve the right to destroy vessels carrying absolute contraband wherever such destruction is permissible according to the Declaration of London, the Secretary of State stated that the American Government, while unwilling to admit that the Declaration was in force, was willing to accept the provisions of the Declaration as governing, pending the arbitral award, subject to the understanding that Article 50, which provides that before destruction of a neutral vessel all persons on board must be placed in safety is not satisfied by merely giving them an opportunity to escape in life boats. It was also suggested that the arbitration should be by summary procedure, based upon Articles 86 to 90 of the Hague Convention, rather than the longer form of arbitration before the Permanent Court at the Hague.

Finally, in a memorandum delivered to the Secretary of State on November 30, 1915, the German Government expressed regret that it could not agree at that time to the American suggestion regarding the appointment of an umpire, and that its ultimate decision would depend upon whether the differences of opinion between the experts, in case they failed to reach an agreement, related to principles, or merely to the appraisement of the value of the ship. In the latter event, the German Government could not agree to the appointment of an umpire. As to the conditions under which the German naval forces might sink American vessels laden with absolute contraband, pending the decision of the arbitral tribunal, the memorandum stated that the German Government was prepared to give guarantees that due provision would be made for the safety of all persons on board before sinking the ship.

The sinking by the Karlsruhe of the Dutch steamer Maria carrying a cargo of grain from an American port to Dublin and Belfast, was a case similar to that of the Frye, but the German prize court refused to allow compensation to the owners. Apparently there are no treaty stipulations between Germany and the Netherlands such as governed the Frye case, and the right of destruction was upheld by the prize court under the Declaration of London and the general principles of international law. The claimants stated that the cargo was intended for private mills which operate for private persons, but the prize court held that inasmuch as Belfast had been declared a base for the British fleet in August, 1914, and Dublin had likewise been declared a naval base on November 25, 1914, foodstuffs destined thereto might be destroyed on account of inability of the captor to take the prize into a home port. The plea that since the Maria was destroyed on September 21st, before Dublin, to which more than half the cargo was consigned, had been officially declared a naval base, was not admitted by the prize court. Likewise, the plea that the grain was destined for the use of private mills was disallowed on the ground that the British Government was free at any moment to confiscate privately owned grain. It will be remembered that the British Government defended the confiscation of the cargo of the Wilhelmina, consisting of foodstuffs consigned to a private individual at Hamburg, on the ground that Hamburg was a fortified place and that the German Government had taken over the control of the grain and flour supply of the country. The two cases were therefore similar, except that in the one case the ship and cargo were destroyed, whereas in the other case they were taken into a prize court for adjudication.

•In the case of the destruction of the Norwegian steamer Svien Jarl, with the loss of twelve members of the crew, by a submarine, the German Government at first declined to allow an indemnity, on the ground that the steamer was not sufficiently marked by neutral signs, but it appears from the press dispatches that the government subsequently agreed to make reparation. Like action was taken in the case of the Danish steamer Betty, which was torpedoed on May 26th because of the alleged inability of the commander of the submarine to distinguish its markings. Only in a few cases, as, for example, where the act was due to failure to distinguish the markings of the vessels or where, as in the case of the Frye, destruction was forbidden by treaty, has the German Government apparently shown a willingness to make compensation.⁷³

It is clear that the German Government maintains that the right to destroy neutral vessels carrying contraband, conditional as well as absolute, is a lawful belligerent right, and, as has been pointed out above, this right is recognized by the Declaration of London in cases where more than half the cargo consists of contraband goods (Art. 40), provided the cargo is liable to condemnation by a prize court, and where the taking of the ship in would involve danger to the captor ship or to the success of the operations in which it is at the moment engaged (Art. 49). It is well to remember, however, that conditional contraband is not liable, under the Declaration of London, to capture, except where it is destined for the use of the armed forces or the government of the enemy (Art. 33), and therefore it is not liable, according to Art. 49, to destruction. To justify the destruction of a neutral cargo carrying conditional contraband, it is not sufficient, according to the Declaration of London, for the captor to show that it is destined to enemy territory; he must show that it is intended for the use of the armed forces or government of the enemy. According to Art. 34, however, such use is presumed where the goods are consigned to enemy authorities, to a government contractor, to an

⁷² On the 8th of April, 1915, a German submarine torpedoed the steamer Harplyce, which flew the flag of the American Relief Commission, and which had painted on its sides in large letters the words Commission du Secours belge. It bore a safe conduct furnished by the German minister at The Hague. But the commander of the submarine did not take the trouble to verify the character of the ship and sank it. Fifteen persons on board lost their lives. Perrinjaquet, La Guerre Européenne, Rev. Gén. de Droit Int. Pub., Jan.-June, 1915, p. 207.

enemy fortified place, or to a place serving as a base for the armed forces of the enemy.

In fact, the Germans have assumed that all towns on the English coasts are fortified places. Thus their bombardment of Hartlepool, West Scarborough, and Whitby was defended on this ground, although the English assert that they were not only unfortified, but open and undefended. Whenever, therefore, a cargo of conditional contraband destined for any English port, whether actually fortified or serving as a base for the armed forces of the enemy or not, has been captured it has been destroyed. Even if the distinction which the Declaration of London recognizes between the right to capture or destroy cargoes of conditional contraband and cargoes of absolute contraband were scrupulously observed, the results would be of little practical consequence, for the reason that during the present war many of the most important commodities heretofore regarded as conditional contraband have in fact been placed by the several belligerents on the list of absolute contraband.

Professor John Bassett Moore, referring to the discussion between Great Britain and Russia during the Russo-Japanese War, remarks that the discussion seemed to emphasize the potentially important relation of the question of contraband to the question of destruction; and he adds:

When publicists have spoken of the presence of contraband as justifying or excusing the destruction of a neutral ship that should not be brought in, they have, no doubt, had in mind cargoes composed of things especially adapted to use in war and confessedly contraband, such as arms and ammunition, and cannot be assumed to have contemplated the subjection of neutral commerce to general depredation under an extension of the categories of contraband.⁷⁴

The very general character of the language of the Declaration of London in respect to the destruction of neutral prizes undoubtedly leaves belligerents a very wide latitude, so that it is possible to turn the exception into the rule without a literal violation of the Declaration. In the present situation, with the ports of Germany blockaded and her naval operations carried on only by submarines, it may reasonably be claimed whenever a prize is captured at sea that the taking of it in would involve grave danger to the submarine, even if it were possible for such craft

⁷⁴ Digest of International Law, Vol. 7, p. 527.

to conduct a prize into a home port. German naval commanders are practically in the same situation as the Confederate commanders were during the Civil War. Their home ports are blockaded and neutral ports are not open to the reception of their prizes; they must, therefore, allow their prizes to go free or destroy them. But in the present war they are doing what no Confederate naval commander ever assumed to do; they are not only destroying enemy prizes, but they are destroying on an extensive scale neutral vessels carrying contraband and with little or no regard to whether the goods consist of munitions of war or foodstuffs, sometimes without satisfying themselves of the true nationality of the ship or the character of the cargo, and sometimes without making any provision for the safety of the crew. If the existing rules of international law are susceptible of an interpretation which permits a belligerent to depredate upon neutral commerce in this fashion, they should be speedily altered. It is not to be assumed that it was the intention of the International Naval Conference to authorize general destruction by belligerents of neutral vessels carrying foodstuffs and other articles of conditional contraband, but the failure to specify precisely the contingencies under which a vessel may be sunk instead of a general authorization to destroy in case of danger or interference with the success of the captor's operations, has had the effect of making each belligerent the judge of the conditions under which destruction is allowable. If this principle be admitted, the rights of neutral commerce must henceforth be at the mercy of belligerent naval commanders, who are free to destroy any neutral vessels carrying goods which they may choose to regard as contraband and which they may find inconvenient to take in for adjudication by a prize court.

JAMES W. GARNER.

NAVAL WARFARE: LAW AND LICENSE

If any one having an elementary acquaintance with the law of nations had been asked, twelve years ago, what were the rights of belligerents and neutrals in naval warfare, he would not have been at a loss for a reply. Subject to one or two minor points of unsettled detail, he would have been quite clear and certain as to the position. A continuous series of cases and textbooks made it plain. If some went further than others in claiming extended neutral immunities, that was a point of academic argument which was perhaps of interest, but of no particular importance, except as showing that the trend of thought was on the whole unfavorable to the belligerent.

In twelve short years the system has been broken down which had lasted for two hundred and fifty, and had stood the test of repeated great wars. The beginnings of decay—the little rift which was to make the harmony of law mute and voiceless, are to be found in the judgment of Salmon P. Chase, Chief Justice of the Supreme Court of the United States, in the cases of the Bermuda and the Springbok. It is very extraordinary that no dissentient opinion was published. The minority of the Supreme Court contained that true successor of Marshall, Kent and Story, Samuel Nelson. No analysis of the voting appears in Wallace's Reports. But from other sources 1 we know that Nelson carried with him Wayne, Clifford, and Swayne (afterwards Chief Justice), whilst Grier, Davis and the two junior judges went with Chase, who had himself only just been raised to the bench. His judgments are less regarded than those of many other Chief Justices of the United States, says Professor Gregory, of Columbia, because, we are told, his "consuming ambition for the presidency" and his political activities diverted his attention from his judicial duties.

It is almost certain, a priori, that the decision of such a majority would be wrong. And wrong it surely was in these instances. It broke down the traditional American encouragement of peaceable merchants

¹ See the writer's Prize Law and Continuous Voyage, pp. 89, 111.

which Jefferson and Franklin had established as a canon of American policy. Shortly to state his view, Chase made the supposed intention of aiding the enemy's forces the sole test of contraband or breach of blockade. He accordingly (1) admitted extraneous evidence, contrary to the rule which made the guilt of the ship and cargo depend, in these extraordinary processes, on her own admissions; (2) rejected the rule which absolutely required, as a condition of confiscation, an avowed destination to an enemy port; (3) adapted and extended the list of contraband so as to include anything that an army might find useful, from buttons to quinine.

His first innovation only a lawyer, trained to know the importance of evidence and costs, could appreciate. His third was universally rejected. His second—generally repudiated so far as blockade was concerned—was more leniently regarded when contraband was in question. And this fatal leniency drove home the wedge. The lenient critics had for the most part in mind the "absolute" variety of contraband only. Insisting on the absolute limitation of contraband to guns, rifles, explosives and the like, they were not very much concerned if such cargoes were cut off from neutral ports. Unpractical and pedantic, they conceded the points that captors might give evidence, and that the theoretical "intention" that the goods should ultimately aid the enemy should condemn. They sold the key of the pass. These two practical safeguards (the common law of Europe from time immemorial) once thrown away, neutral safety had been bartered for nothing. that remained was for belligerents to insist on enlarging the list of contraband articles. And to this the theorists could not object. For they had agreed (1) that the "intention" was decisive; and (2) that any evidence might be adduced to prove it. After that there was no sense or logic in saying that if you may stop bayonets because they are meant to help the enemy, you may not stop quinine or potatoes. The very raison d'être of the former rule which limited the category of contraband to markedly military articles, was to avoid the necessity for disputes about intention. Once it was admitted that disputes about intention were precisely what it was the business of a prize court to try, there was evidently no point in restricting its laudable activities. A prize court must act summarily, or it does injustice. It cannot act

summarily if it tries cases like a court of common law. But if it has made up its mind to abandon its functions of deciding summarily on the ship's own evidence, and to behave like a court of *nisi prius*, there is no reason why it should stop short in its novel career. Chief Justice Chase was logical, and did not stop short. The pedants were mistaken in thinking that other tribunals would.

But for a long time no occasion arose. The French proclamation declaring rice contraband in 1885 was never acted upon, nor accepted by any prize court, and was quoted by authors only as a strange aberration—a sort of specimen hung up for admiration in a moral museum, like a white blackbird. Bismarck's speech to an inconvenient deputation of merchants, in which he declined to quarrel with France on their account, telling them that the exclusion of provisions might sometimes be a legitimate means of warfare, was certainly not meant as an exposition of the law of contraband. Probably he meant no more than thisthat by proper means (e.g., a blockade) provisions could be excluded from China by France, so that it was impossible to rely on any natural and immutable right to import them. We know that on another occasion the Prince flatly declared that saltpetre could not possibly be contraband, since it was incapable of direct use in war, and needed to undergo a process of manufacture. In the South African War of 1900 and in the Abyssinian-Italian War of 1896 the question of transport to a neutral port did arise. In both cases the incriminated cargo was restored or compensation paid. On the whole, therefore, the ancient doctrines were maintaining their ground. Pillet and Despagnet-Bolck assert them no less than Kleen Hall persisted that the American decisions would probably find no defenders even in America.

Then came the Russo-Japanese War of 1904–5. It found an ignorant world, which had forgotten its rights. An extended list of contraband was published by the Russian Admiralty. Neutral destinations were disregarded. Captors' evidence was de rigueur. Neutral ships were destroyed.

Abraham Lincoln had certainly never contemplated this last behavior. He might well have desired to keep up a blockade of the Southern ports by the expeditious process of firing on everything that approached. But neither he nor Semmes of the *Alabama* harmed a neutral

ship (except for resistance to visit). Evidently, neutral trade was now in a parlous case. And all this time the absolute immunity of the enemy's own goods on board a neutral carrier was loudly proclaimed as an axiom of international intercourse!

The force of folly could no further go. The war of 1914 saw the new pretensions uncountered and even approved. The Naval Conference of London had discussed and regulated them. It had even given a implicit sanction to the belligerent claim to strew the high seas with engines of destruction. The weaker Powers had been excluded from that august discussion, in which the only thing which counted was military force. Holland and Spain were there, indeed, but they did not count.

How the claim to appropriate the high seas as a mine-field has led to the claim to appropriate them as a "military zone" into which the neutral ship ventures at its peril: how the claim to capture grain and ore as contraband has developed into the claim to exclude all trade with an enemy according to the practice of the sixteenth century, all this is fresh in the recollection of our readers. The old questions of 1793 and 1807 are revived almost in their original form.² The enormities (and they are many) of Germany are recounted to justify retaliation upon America, Spain and Sweden. A freedom from judicial subtleties is claimed which might have satisfied Brennus or Lynch, Fouquier-Tinville or Bethmann-Hollweg.

"Hard cases make bad law." The natural sympathy for the Allies, contending for all that peaceable countries and small countries and free countries hold sacred, will be misplaced if it ends in handing over the high seas as the sole preserve of belligerents.

We are told, indeed, that the new conditions of commerce render imperative an abandonment of the old and established rules.

It may be so. If it be so, the change must be accepted by all, and not dictated by a few. It must be so definite and obvious as to be accepted by common good sense. But no such general acceptance can

² The reader of modern debates on "Tightening the Blockade" will be amused to read in Cobbett's Parliamentary Debates, the speeches of 4 February, 1807 which afford an exact parallel to them of today. (Vol. 8, col. 620.) See also the debates of 1808–9, s. v. "Orders in Council," *ibid.*, Vols. 9, 10, 11, 12.

even be thought to exist in favor of the abandonment of the ancient principles of prize law, which the powerful nations would be, and are, the first to maintain against small warring communities. And the fact is, that no revolution is required. The stock allegation is that neutra! trade must be attacked because railway transport is so swift and easy. The statement will not bear examination. Railway lines, especially in war time, are apt to become congested. Much of the delay of transport is involved in loading and unloading at terminals, and in the delay of waiting for dispatch. Railways are not a magician's rod. On the other hand, the modern belligerent is provided by science with a far more effective means of interrupting commerce than the frigate or brig which was equally dependent with her prey on the wind and the weather. The modern cruiser can overhaul anything. Thus the neutral is subject to a control of a stringency of which the casual eighteenth and early nineteenth century knew nothing. According to the Naval Annual, Great Britain possessed in 1914 some 118 effective cruisers (besides torpedo boat destroyers, ocean-going and other, over 200 in number), none of which fell below 19 knots in speed. Sixteen were of 29 knots. Four were of 26 knots. Twenty-four were of 25 knots. Four were of 24 knots. Eighteen were of 23 knots. Twelve were of 22 knots. Five were of 21 knots. Sixteen were of 20 knots. Nineteen were of 19 knots: 118 in all.

Whilst of the world's oceanic shipping, setting aside some 23 "fliers" of 20 knots and over, it may roughly be said that 20,000 vessels are of 10 knots and under, 2,000 of from 10 to 12 knots, 200 of from 12 to 19 knots, and 20 of 19 knots. It is a mistake to suppose the ordinary passenger and cargo liner to the East or to South America to be comparable in speed to the few exceptionally fast boats which ply between Europe and New York. A speed of 15–17 knots is common and sufficient. There is therefore scarcely any merchantman which is not at the mercy of any cruiser: and none which is not at the mercy of many.

Because a new weapon, like the submarine, is invented which cannot be used as effectively as it otherwise might without disregarding the accepted rules of law—that is not a reason for discarding those rules. It is a reason for discarding the weapon. No passing advantage can

compare with the danger of encouraging the idea that the law of nations is a toy blown about by every blast of circumstance.

What is really a novel development, explaining (if it is far from justifying) the extraordinary latitude which belligerents are assuming, is the recognition that has been accorded to the shocking practice of minelaying on the high seas. By a cool process of assertion the military Powers invested this abominable outrage on humanity with a color of legality. When once it was recognized that the open sea could be mined, the appropriation of the open sea—the highway of neutrals—as a monopoly of combatants was sure to follow. It is impossible to allow waters to be denied to the British fleet. If they are mined by an enemy, they must be cleared. And in bringing to bear the necessary powers of clearance, there is a great temptation, to say the least, to protect the operations by counter-mine, and to exclude neutrals from the wide areas of water affected. The idea of a "zone of operations" apparently took its rise in a phrase of Lord Lansdowne, uttered in relation to a Interference with British commerce during the different subject. Russo-Japanese War might, he suggested, be fairly restricted to the "zone of operations" in the Far East. Russia, it will be remembered, had seized the Malacca in the Red Sea: and it was desired to place some limitation on the recurrence of these incidents. The suggestion of a limited zone for the exercise of war rights, though received with much favor in the uninstructed press, the Russian declined with thanks: and it is obvious that no belligerent will resign the right to stop illicit trade at its source. But the conception of a "military zone" seems to have appealed to those responsible for the conduct of naval operations. Without acknowledgments to Lord Lansdowne, the principle was utilized to cover a declaration warning neutral vessels against cruising, in order to obtain information, in the zone of hostilities. Now a vessel which cruises about in order to obtain information to assist the enemy is doing a hostile thing, and is clearly liable to be dealt with as an enemy ship. But a neutral which chooses to visit the scene of hostilities for her own purposes—whether they be to obtain information for the neutral public, or for the gratification of private curiosity, is using her strict rights. She is on her own ground, and no admiral has any right to treat her people as spies or to

exercise any authority over her, other than to send her in for adjudication in a proper case of grave suspicion of enemy control.

The vague suggestion, for which Lord Lansdowne was thus, it would seem, responsible, of a "zone of operations," in which the normal rights of neutrals are in a greater or less degree superseded by the dictation of belligerents, was a novelty. No such idea was known to the nineteenth century. Throughout its course, the seas were free to all. It was reserved for the twentieth, in its humanitarian fervor of progressiveness, to concede to a combatant that he might exercise dominion over the high seas.

The creation of "a military zone" in the North Sea, announced by the British Admiralty in early October, was not very clearly set forth.

On 3d October, 1914, it was announced by the Secretary to the Admiralty that the German policy of mine-laying, combined with the German submarine activities, made it "necessary" for the Admiralty to adopt counter-measures. We do not complain of the hazy language here exhibited, but we are sceptical as to the necessity which can justify the appropriation of the North Sea by any combatant, any more than it could justify the invasion of Belgium. The Admiralty, however, proceeded to warn ships that it was unsafe to cross the area between lat. 51° 15′ N. and 51° 40′ N. and long. 1° 35′ E. and 3° E.—whilst at the same time not encouraging the supposition that the navigation of the southern part of the North Sea was safe anywhere.

Essentially, the germ of a paper blockade lay in this announcement. For if a belligerent may always render any given area of sea unsafe for neutrals, he can obviously effect the exclusion therefrom of all traffic. Ships are more effectively warned off by the threat of automatic destruction than by the threat of capture and prize litigation. This facilitation of paper blockades was pointed out several years ago in the *Révue de Droit International* as an obvious consequence of the detestable new policy of submitting to the validity (under circumstances of "necessity") of the destruction of neutral prizes—a violent act which had never disgraced the most arrogant commander until the dawn of the twentieth century. Unfortunately, by refraining from claiming more than the mere net value of hull and freight in the case of the W. P. Frye, sunk

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by a German cruiser, the United States in a measure encouraged destruction. They claimed nothing in respect of the injury done to all American shipping by the German blow at its security.

For the moment, matters took no fresh turn. The American note to Great Britain, presented in December, 1914, dealt almost exclusively with the delays and supposed injustices occasioned by our enlarged interpretation of the idea of contraband. But in the new year it was announced (27th January) that the German Government would, as from 1st February, take over the whole of the food stocks of the country. This, though alluded to by a legal correspondent of The Times (London) as creating a situation unprecedented in international law, had a very precise analogy in the measures adopted by the French revolutionary government in 1793. De Marten's Causes Célèbres devotes a whole section to that It is universally recognized that the American and Danish protests against the pretension that foodstuffs became contraband because the government had taken control of their distribution, were thoroughly justified. It cannot be inferred that because food is to be under the control of a government department, therefore it is necessarily destined for naval or military use. That the Declaration of London asserts that it can be so inferred, only demonstrates the fatuity of that instrument.

But it was announced that His Majesty's Government would lay hold of the new German declaration (afterwards explained away) in order to treat cargoes of food for Germany as contraband. This supposed intention raised a storm of indignation in the German Empire: the direct outcome of which was the celebrated declaration of 4th February. It is proper to remember, however, that before that declaration, a raid had been made (on 30th January) by German submarines on British shipping in the Irish Sea (the Ben Cruachan, Linda Blanche and Kilconn being sunk). Simultaneously with a cautiously worded statement issued by the British Foreign Office on 4th February, which confirmed the suspicions of those who believed that the government proposed to invite the prize court to treat food as contraband (while illogically according an ostentatious exemption to the carriers), the text of the Berlin declaration was reported in Amsterdam (The Times, 5th February). It was justified as a retaliation upon neutrals for their

failure to prevent the British from acting on their enlarged conceptions of contraband.

Its terms affected to proclaim the British seas a "war area," in which all British ships would be sunk at sight, and in which no neutral ship could therefore reckon on safety "on account of the uncertainties of naval war."

Of course, as a blockade, this was ridiculous. It was hopelessly ineffective. It was not intended as a proclamation of blockade; but as an attempt to get the benefits of blockade in another way. Whatever we may think of the destruction of an enemy's merchant-ships without trial and without any attempt to save life, there can be no two opinions that to destroy neutral ships in this manner is flatly illegal. The Doggerbank case between England and Russia in 1905 shows that "accidental" destruction of neutral vessels is always and everywhere a wrong for which only prompt reparation and apology, coupled with security against repetition, can atone.

The British reply was to interdict all trade with Germany: and it was justified on the ground of retaliation. As a retaliation against an indefensible German atrocity, it is well capable of being sustained. But it strikes equally at neutrals, who are entitled by the law of nations to continue to trade with Germany. We have no right to retaliate upon them. In doing so, we commit precisely the old error of the Orders in Council of 1807, which it was thought had passed into the limbo of buried mistakes. Nothing did us more harm, for less corresponding good, than the pretension in 1807 to treat the ocean as a preserve, and to interdict neutral trade at our pleasure. It created the legend of a selfish Britain. "Illegality," says a warm admirer of Britain (Dr. T. A. Walker of Cambridge), "was met with illegality." A sympathetic neutral like America was driven into non-intercourse and then into war. On 11th March, 1915, the Order in Council was made. It was not published until the 15th March.

The mysterious Order goes beyond even the Orders in Council of 1807, for it throws upon the judge of the court the fulfilment of a purely political function—the determination of what is to be done with the intercepted cargo or its proceeds. The court has nothing to guide it. The voyage was innocent: the terms on which the innocent neutral is

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to get back his goods, or such sum as they may have been disposed for, over his head, are to be such as the court thinks just. Is the court by penalties to discourage such voyages? Is it by penalties to discourage dilatoriness or recalcitrance on the part of neutrals? Is it to treat them more favorably according to the greater or less friendliness of their governments? If it is to make no such discriminations, why is the latitude left to it? If it is to make them, why is such a duty imposed on a judge of prize? He is dragged into the arena of state policy, when he ought to sit serene above it. George III never asked Sir W. Scott to pronounce on the conduct of neutrals. He told him flatly to condemn them if they traded with France. That was a clear proposition of fact, capable of precise ascertainment: in short, a question for a judge. Questions of how to deal with neutrals in one or another set of circumstances are questions, not for a court, but for a Cabinet.

The American note of March treated the measure as a blockade, which it did not pretend to be (though the British Cabinet now seems inclined to justify as it such), and hoped that it would be kept within the accustomed limits of blockade, which there was no reason to suppose it would. The United States Government appeared to be pleased with the unjudicial latitude entrusted to the judge. But though it is well to leave it to a judge to apply the law to new facts, it is not well to leave it to him to make new law to the government's piping.

Mr. Page, the American Ambassador, has signalized other ambiguous features of the Order. What is meant by the "produce" of Germany? Is a packet of dye, made in Germany, the "produce" of Germany after it has been the subject of a bona fide sale and actual completed delivery to an Italian firm, and is then exported by them from Italy? What is an enemy "destination"? an immediate definite enemy purchaser?—an immediate enemy market?—or a possible hypothetical enemy use? How can innocent neutral goods be "requisitioned" under the bare authority of an Order in Council?

No one can say. That may be why the Government have left such a free hand to the judge. Perhaps he is expected to appraise the conduct of neutrals somewhat as he apportions the degree of blame in a collision case—and to find them conformably with the directness of ² Cf. the cases of the *Antares* and the *Zamora*, 31 Times Law Reports, pp. 290, 513.

But the whole diliquescent proceeding, afraid of their intercourse. direct and plain statement, sheltering itself under the skirts of the court, and hiding the policy of the statesman behind the robe of the judge, is characteristic of our age. We have no Castlereagh: nor even a Perceval. The only unambiguous feature of the Order is that it finally abandons all pretence at observing the terms of the Declaration of Paris. "Every merchant vessel * * * carrying goods which are enemy property, may be required to discharge such goods in a British or allied port. Any goods so discharged * * * shall, if not requisitioned for the use of His Majesty, be restored by order of the court, upon such terms as the court may in the circumstances deem to be just, to the person entitled thereto." It is inconceivable that the court, after enemy property has carefully been brought under its jurisdiction, will "consider it just" with equal care to let it go again. If the provision means anything, it means that enemy goods will no longer be safely laden on a neutral ship. There is no doubt that they will be requisitioned or sequestrated, and that so long as the war lasts, they will not be paid for. So the Declaration of Paris follows the Declaration of London into the sphere of ancient history and the neutral flag no longer "covers" enemy property.

Lord Crewe's declaration, made on December 21, 1915, to the effect that the Order only meant that, "subject to the accepted principles of international law, every conceivable effort would be made to prevent goods that mattered entering or leaving Germany," and that "surely no one can imagine that when Mr. Asquith said that goods of all kinds should be kept out of Germany, he meant to tear to ribbons all the accepted rules of international law," can only evoke respectful wonder. If the Order was only meant as a vigorous affirmation of the ordinary law, it was certainly not calculated to be so interpreted.

T. BATY.

SOME PHASES OF THE LAW OF BLOCKADE

Although the development of international law has tended more and more to confine the operations of war to such as are directed against the armed forces of the belligerents and to relieve the peaceful population from their immediate effects, nevertheless a number of practices employed principally for the purpose of bringing economic pressure to bear upon the general mass of enemy non-combatants, still survive in full vigor and are well recognized as legitimate. One of the most important of this class of operations is blockade. The end of blockade is to cut off trade and intercourse with specified ports or with a specified coast line in possession of the enemy.

There have been a few expressions to the effect that a blockade must be limited to particular ports. This doctrine was enunciated by Monroe in 1816 ¹ and by Clayton in 1849.² It is, however, a principle now unanimously accepted by writers on international law that a blockade may extend to an entire coast line.³ The Civil War blockade, which affected 3000 miles of coast and the legality of which is unquestioned, set at rest whatever doubt there was upon this subject.

The fundamental principle governing blockades is that a blockade in order to be binding must be effective. This rule was formulated in the Declaration of Paris of 1856 in the following language: "Blockades in order to be binding must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of an enemy." It will be noticed that this statement is somewhat indefinite and that there is no attempt to explain in detail what is necessary to constitute "a force sufficient really to prevent access to the coast of an enemy." This question has given rise to considerable debate and has resulted in

¹ Monroe to de Onis, March 20, 1816, Moore's Dig., VII, 789-790.

² Clayton to Flennicken, May 12, 1849, Moore's Dig., VII, 791-792.

² Woolsey, 342; Calvo, V, §§ 2865–2867; Ortolan, Règles internationales et diplomatie de la mer, II, 332; Hautefeuille, Des droits et des devoirs des nations neutres en temps de Guerre Maritime, II, 195; Heffter, 341.

two divergent views,—one known as the Continental and the other as the Anglo-American. The extreme Continental doctrine, championed particularly by French publicists, requires the blockading ships to be permanently anchored in the immediate offing of the ports to be affected, and the distance between the ships to be such as to subject to cross fire any vessel attempting to pass the line of blockade. Fauchille goes still further and advances the theory that a blockade is not really effective unless the stationary squadron is supported by a cruising squadron for the purposes of warning and making captures. The doctrine that a blockading force must be a stationary and not a cruising squadron also receives some support in the expressions of American statesmen of the early nineteenth century. Thus this idea is espoused by Monroe.

The Declaration of Paris, however, which must be regarded as the authoritative enunciation of the principles of international law governing the efficacy of blockades, furnishes no foundation for the so-called Continental theory that a blockade is not effective unless maintained by a stationary squadron whose ships are anchored sufficiently near each other to subject to cross fire any vessel attempting to pass. The Declaration requires merely a force sufficient really to prevent access to the blockaded coast. What constitutes such a force is a question of fact to be determined by the circumstances of each individual case. This is recognized by the Declaration of London of 1909, which provides in Article 3 of the portion of the Declaration relating to blockades, that "the question whether a blockade is effective is a question of fact." Manifestly, a cruising squadron may be quite as efficient in attaining the result as stationary ships. The Continental doctrine thus forms an unwarranted extension of the requirements imposed by the Declaration of Paris. This fact is recognized even by some Continental writers.7

The Anglo-American view is to the effect that a blockade may be maintained by cruisers.⁸ This principle is sustained by the practice of

- ⁴ Hautefeuille, II, 195. See Hall (6th ed.), 704-706.
- ⁵ Du Blocus Maritime, 130-131.
- ⁶ Moore's Dig., VII, 789-790.
- ⁷ Nys, III, 181; Ortolan, 332.
- ⁸ Westlake, II, 264-5; Hall (6th ed.), 704-6; Oppenheim (2d ed.), II, 462; *The Olinde Rodrigues* (1898), 174 U. S. 510.

nations, for most of the important blockades of the last fifty years were so enforced. This is true of the blockade by Great Britain of the Russian Baltic coast in the Crimean War; of the blockade of the Confederate ports by the North in the American Civil War; of the blockade by Denmark of the coast of Prussia in 1864; of the Turkish blockade of the Russian Black Sea coast in the Russo-Turkish War; of the blockade of the Peruvian and Bolivian coast by Chile in 1880; of the American blockade of Cuba and Porto Rico in the Spanish-American War; and of the Japanese blockade of Liaotung peninsula in the Russo-Japanese War.

The test of the efficacy of a blockade is whether it renders it dangerous for vessels to attempt to enter the blockaded port.⁹ The instructions issued by the American Government in the Spanish War to its naval commanders express this test in the following language: "A blockade to be binding and effective must be maintained by a force sufficient to render ingress to or egress from the port dangerous." ¹⁰ Woolsey defines a sufficient force as such as "will involve a vessel attempting to pass the line of blockade in considerable danger of being taken." ¹¹ Oppenheim states that "real danger of capture suffices, whether the danger is caused by cruising or anchored men of war." ¹²

During the Civil War some question was raised as to the sufficiency of the blockade of the coast line of the Confederate States. All doubts on this subject were, however, set at rest in a communication sent by the British Foreign Secretary, Earl Russell, to the British Ambassador to the United States, Lord Lyons. In this letter, which is dated February 15, 1862, Earl Russell states: 18

Her Majesty's Government, however, are of opinion that, assuming that the blockade is duly notified, and also that a number of ships is stationed and remains at the entrance of a port, sufficient really to prevent access to it or to create an evident danger of entering or leaving it, and that these ships do not voluntarily permit ingress or egress, the fact that various ships may have successfully escaped through it will not of itself prevent the blockade from being an effective one by international law.

- ⁹ The Olinde Rodriques, supra.
- ¹⁰ Proclamations and Decrees during the War with Spain, 85.
- 11 Page 343.
- 12 II, 162.
- ¹³ Parliamentary Papers: Papers relating to the Blockade of the Ports of the Confederate States, p. 119.

The adequacy of the force to maintain a blockade being always, and necessarily, a matter of fact and evidence, and one as to which different opinions may be entertained, a neutral state ought to exercise the greatest caution with reference to the disregard of a *de facto* and notified blockade; and ought not to disregard it, except when it entertains a conviction, which is shared by neutrals generally having an interest in the matter, that the power of blockade is abused by a state either unable to institute or maintain it, or unwilling, from some motive or other, to do so.

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Another point involved in the question of the efficacy of a blockade is the distance of the blockading squadron from the blockaded coast. Here, again, the Declaration of Paris is silent, for it merely requires the presence of a squadron sufficient really to prevent access to the coast of the enemy, and, as generally construed, the fact that ingress and egress are rendered dangerous constitutes a sufficient compliance with the requirement. While the writers who hold to the so-called Continental view claim that ships should be stationed in the immediate offing of the blockaded ports, the Anglo-American doctrine, which allows blockades by cruisers, imposes no such restriction. It would seem that the Anglo-American doctrine is justified by the Declaration of Paris, for the presence of a blockading squadron at a considerable distance from the enemy's coast may be quite as effective in preventing access to it, as ships anchored or cruising within a few miles from the littoral. Neither are the interests of neutrals in any way jeopardized by a blockade carried on at a distance, inasmuch as the purpose of the Declaration of Paris, which was made in the interest of neutrals, was to prevent "paper" blockades. So long as there is a cordon of ships intercepting vessels attempting to reach the blockaded coast from any quarter whatsoever, the blockade is real, and not fictitious, and the distance of the blockading squadron from the enemy's littoral would seem to be immaterial. This theory finds strong support in Hall, who writes as follows:14

Provided access is in fact interdicted, the distance at which the blockading force may be stationed from the closed port is immaterial. Thus Buenos Ayres has been considered to be effectually blockaded by vessels stationed in the neighborhood of Montevideo; and during the Russian War in 1854 the blockade of Riga was maintained at a distance of one hundred and twenty miles from the town by a ship in the Lyser Ort, a channel three miles wide, which forms the only navigable entrance to the gulf.

Modern developments in naval warfare make it essential that a block-ading squadron be placed at a considerable distance from shore. The increased range of coast defense guns, the use of controlled and contact mines, the perfection of the submarine,—all make a blockade where the ships are within a few miles of the coast no longer possible. To so limit blockades would be equivalent to prohibiting them altogether. As such a restriction is not imposed either by the letter or the spirit of the Declaration of Paris, we cannot but come to the conclusion that the legality of a blockade is in nowise affected by the distance between the enemy's littoral and the cordon of blockading ships.

Assuming an effective and binding blockade, it becomes necessary to inquire what acts constitute a breach subjecting a captured vessel or its cargo or both to condemnation. On this subject also there are two divergent views,—the Continental and the Anglo-American. The Continental writers unanimously uphold the theory that only an attempt to pass the line of blockade for the purpose either of ingress into or egress from a closed port, can constitute a breach of blockade, and that a ship may be successfully accused of violating a blockade only if caught in flagrante delicto. 15 On the other hand, the rule developed by the British prize courts is to the effect that the mere sailing for a closed port is a violation of the blockade and that such a vessel is subject to capture at any time after its departure. 16 The theory underlying this rule is that the inception of a voyage with an intention of evading a blockade is a beginning of the execution of the intention. The principle applied by the British prize courts has been adopted in the United States. It was accepted as law by the Supreme Court during the Civil War. Thus in the case of The Circassian, 17 the court stated:

¹⁵ Nys, III, 192; Ortolan, 357; Hautefeuille, II, 221; F. de Martens, III, 290; Calvo, V, § 2887; Heffter, 347.

¹⁶ The Columbia (1779), 1 C. Rob. 154; The Vrow Johanna (1799), 2 C. Rob. 109; Westlake, II, 269; Hall, 710; Oppenheim (2d ed.), II, 469; Halleck (4th ed.), II, 228-9; Phillimore (3d ed.), III, 488.

¹⁷ (1864), 2 Wall. 135, 151.

It is a well established principle of prize law as administered by the courts, both of the United States and Great Britain, that sailing from a neutral port with intent to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel and, in most cases, its cargo, to capture and condemnation.

This rule was acted upon by the Government of the United States in the Spanish War. The Instructions to Blockading Vessels and Cruisers provided as follows: ¹⁸

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8. The liability of a blockade runner to capture and condemnation begins and terminates with her voyage. If there is good evidence that she sailed with intent to evade the blockade, she is good prize from the moment she appears upon the high seas. Similarly, if she has succeeded in escaping from a blockaded port she is liable to capture at any time before she reaches her home port. But with the termination of the voyage the offense ends.

The United States Naval War Code of 1900 formulated the same principle in the following language: 19

Art. 44. The liability of a vessel purposing to evade a blockade, to capture and condemnation, begins with her departure from the home port and lasts until her return, unless in the meantime the blockade of the port is raised.

An amelioration has been at times introduced into the somewhat rigorous Anglo-American doctrine, to the effect that if the blockaded port is distant from the port of departure, a vessel may in good faith sail for the blockaded port on the expectation of finding the blockade lifted by the time it arrives, provided its intention is not to attempt to enter if the blockade still continues. This idea was adopted by Lord Stowell in the case of *The Betsey*, ²⁰ an American ship which had sailed from an American port for Amsterdam during the British blockade of that city and was captured on the way. Lord Stowell held that as Americans were at such a distance from Europe they might send their ships conjecturally upon the expectation of finding the blockade broken up when they arrived, and ordered the ship restored. In view of the

¹⁸ Proclamations and Decrees during the War with Spain, pp. 85 et seq.

¹⁹ International Law Discussions, 1903, p. 113. This code was withdrawn in February, 1904.

^{∞ (1799), 1} C. Rob. 332; see, also, Oppenheim, II, 469.

fact, however, that modern improvements in navigation have practically obliterated all notions of distance, this exception to the general Anglo-American doctrine that the inception of a voyage for a blockaded port subjects the vessel to capture and condemnation, must be deemed obsolete.

The chief weakness of the general doctrine is that it fails to provide for any locus penitentiæ, or to permit vessels to sail in good faith with alternative destinations. This fact was evidently recognized by the American authorities during the Spanish War, for the Instructions to Blockading Vessels and Cruisers contained the following relaxation of the general principle: ²¹

A neutral vessel may sail in good faith for a blockaded port with an alternative destination to be decided upon by information as to the continuance of the blockade obtained at an intermediate port. But, in such case, she is not allowed to continue her voyage to the blockaded port in alleged quest of information as to the status of the blockade, but she must obtain it and decide upon her course before she arrives in suspicious vicinity; and if the blockade has been formally established with due notification, any doubt as to the good faith of such a proceeding should go against the neutral and subject her to seizure.

This modification of the rule was also enacted in the United States Naval War Code of 1900.²²

The Declaration of London, which to a very large extent represents a compromise between the views of Continental and Anglo-American jurists, has attempted to discard the Anglo-American rule on this point and to give effect to the Continental doctrine. In Article 17 of the portion of the Declaration which relates to blockades, it is provided that "neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective." Article 20 is to the effect that "a vessel which has broken the blockade outwards, or which has attempted to break the blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected." Inasmuch, however,

²¹ Proclamations and Decrees during the War with Spain, pp. 86 et seq.

²² International Law Discussions, 1903, p. 113.

as the Declaration has not been accepted as binding and has not the status of law, the Anglo-American doctrine which we have been discussing, must still be regarded as in force in Great Britain and in this country.

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A natural development of this principle led to the application of the so-called doctrine of "continuous voyages" to blockade running. If a ship destined for a closed port is subject to capture from the moment that it leaves the port of departure, should it make any difference as to its liability to capture and condemnation that it is to stop at a nonblockaded port on the way? This question presented itself during the Civil War and was answered in the negative. The first case in which it came before the United States Supreme Court was that of The Circassian.23 The controversy involved a vessel which left Bordeaux for Havana, intending to proceed thence to New Orleans, which was then in a state of blockade. It was captured by an American warship on the way to Havana. The court held that the vessel was subject to condemnation. It reasoned that sailing for a blockaded port with knowledge of the blockade constituted a violation of the blockade, and that an intention to stop at an intermediate neutral port did not change the character of the voyage. The mere fact that after arriving at Havana the ship might change its ultimate destination was immaterial, according to the court, since at the time of capture its ultimate destination was New Orleans and in that fact lay the gist of the offense.

The question again came before the Supreme Court in the case of The Bermuda,²⁴ which was a ship that originally left Liverpool for Bermuda and from the latter point proceeded to Nassau, a port in the Bahama Islands. From Nassau its cargo was intended to run the blockade of the Confederate ports. The transshipment was to be either by the Bermuda or by some other vessel, but the court considered that fact immaterial. The vessel was captured en route between Bermuda and Nassau. It was held that the voyage from Liverpool to the blockaded port was a single voyage and that consequently the vessel became subject to seizure as soon as it left the territorial waters of Great Britain. The ship was, therefore, condemned.

^{23 (1864), 2} Wall. 135.

^{24 (1865), 3} Wall. 514.

Similarly, the case of *The Adela* ²⁵ involved a British vessel which sailed for Nassau, and was intended to proceed thence to Charleston, then in a state of blockade. The ship was captured on the way to Nassau and was condemned.

It would seem that in essence these cases did not evolve a new doctrine, but merely applied a well-established principle to a new state of facts. The general rule was well-recognized, as we have seen, that a ship destined to run a blockade became subject to capture and condemnation as soon as it left port and appeared upon the high seas. The fact that the ship was to stop at a non-blockaded port or ports on the way did not affect the situation. The entire voyage from the original point of departure to the ultimate destination was a single, continuous voyage. Consequently, to confine the general rule to that part of the voyage which extended from the last intermediate port to the blockaded port, would have been an altogether artificial limitation and not justified in reason.

A somewhat different problem presented itself in the case of The Springbok.²⁶ The Springbok was a British ship, which sailed from Great Britain for Nassau in the Bahamas and was captured en route by an American cruiser. The voyage for Nassau was bona fide and the ship was not intended to proceed further, but it was found that its cargo was to be transshipped in another vessel from Nassau to some Southern port then in a state of blockade. The owners of the ship were not aware of the design of the owners of the cargo. The court held that the ship was free from fault and should consequently be restored, but that the cargo should be condemned. This decision represents an extension of the general principle which we have been discussing. Thus far the courts had held that a ship sailing with an intention of ultimately evading a blockade was lawful prize as soon as it left its original port of departure. In the Springbok case the court applied the same rule to cargo, and held that cargo which was shipped with an intention of ultimately attempting to bring it into a blockaded port was subject to seizure as soon as it left the original point of shipment, even though it was to be transshipped at an intermediate port and the vessel in which it was found

^{25 (1867), 6} Wall. 266.

^{28 (1866), 5} Wall. 1.

at the time of capture was not the one which was to attempt to carry it into the blockaded port.

The application of the doctrine of "continuous voyages" to the law of blockade met with severe criticism at the hands not only of Continental savants, but also of some British writers. The British Government, however, acquiesced in it and recognized it as correct. Consequently, since the principles of international law are to be deduced from the practice of nations rather than from the writings of theorists, where the two are at variance, the rule of "continuous voyages" as applied in the Civil War must be regarded as part of the Anglo-American law of blockade. 28

If, however, the Declaration of London should ever be adopted, this principle would cease to exist, for Article 19 provides that "whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if, at the moment she is on her way to a non-blockaded port." This statement seems almost superfluous, since other provisions of the Declaration in effect adopt the Continental doctrine that a breach of blockade can consist only of an attempt to pass the line of blockade.

The distinguishing characteristic of the foregoing cases is that in each instance the vessel or the cargo in question was destined ultimately to attempt to reach a closed port from the sea by means of passing the line of blockade. An entirely different situation presents itself, if there is to be no attempt to break the maritime blockade, but the goods are to be unloaded at a neutral port and are to be introduced into the blockaded port from the interior by means of transportation by land, canal, or river. Where a port is blockaded from the sea only, it is no offense from the standpoint of international law to bring into it goods by land. It follows, then, that no offense is committed by shipping goods by sea to a neutral port with the intention of transhipping them to a blockaded port in such manner as to reach the destination by land, without breaking the blockade.

This question was presented for adjudication to Lord Stowell in the

28 Oppenheim, II, 470; Woolsey, 356.

²⁷ Fauchille, Du Blocus Maritime, 337; F. de Martens, III, 290; Phillimore (3d ed.), III, 490; Hall, 711; Oppenheim, II, 470.

case of *The Stert*.²⁹ The ship's cargo was seized by a British warship and was brought before the prize court and sought to be condemned on the ground that the blockade of Amsterdam had been violated in shipping it. It appeared that during the British blockade of that port the goods were sent from Amsterdam to Emden by inland navigation and were there transshipped to London on the *Stert*. Lord Stowell ruled that since the blockade of Amsterdam was purely maritime and did not affect interior navigation, no breach of blockade took place when the goods were shipped from Amsterdam, and ordered the cargo restored.

In the case of *The Jonge Pieter*, which was also decided by Lord Stowell, the situation was reversed. The ship was carrying goods to Emden which it was intended to transport thence to Amsterdam by interior navigation, Amsterdam being blockaded from the sea by Great Britain. Although the decision turned upon another point, Lord Stowell, in the course of his opinion, made the following statement regarding the question under discussion:

The blockade of Amsterdam is, from the nature of the thing, a partial blockade, a blockade by the sea; and if the goods were going to Emden, with an ulterior destination by land to Amsterdam, or by an interior canal navigation, it is not according to my conception, a breach of the blockade.

This problem attained considerable importance during the Civil War. For the purpose of evading the blockade of their coast, the government and inhabitants of the Confederate States frequently imported goods via the Mexican port of Matamoras and then transshipped them overland into Texas. The trade of Matamoras flourished as it never had before or since. The Peterhoff, ³¹ a British ship, carrying a cargo to Matamoras which was intended to be transshipped to the Confederate States, was captured en route to that port and brought before a prize court. When the case came up on appeal before the Supreme Court, that tribunal held that while so much of the cargo as was contraband should naturally be condemned in accordance with the principles of law governing the disposition of contraband, the remainder should be restored, since it

^{∞ (1801), 4} C. Rob. 65.

²⁰ (1801), 4 C. Rob. 79.

¹¹ (1866), 5 Wall. 28.

was to reach its ultimate destination by inland navigation and hence without violating the blockade.

The conclusion reached by the British and American courts upon this question has been approved by writers on international law.³² Thus Phillimore says:

But a blockade of a port is not violated by shipments forwarded by inland navigation from that port to an unblockaded port.

Again:

The carriage of goods through the medium of interior communication from a blockaded port to a neutral port, is no breach of a purely maritime blockade, and goods so transmitted cannot be seized on their passage from the neutral port to a lawful port, by reason of their having so, as they certainly have, defeated the object of the blockade.

This doctrine is only a corollary of the requirements of the Declaration of Paris, and any other rule would undermine the fundamental principle that a blockade in order to be binding must be effective, and would permit blockades that are partially fictitious. A blockade is binding only to the extent to which it is properly effective. Thus a blockade enforced as to only a part of the enemy's coast line is binding on neutrals only as to that part, and neutral trade with others of the enemy ports may not be interfered with or interrupted. Similarly, since ordinarily a blockade is purely maritime, overland trade with a blockaded port is lawful. A fortiori, it is legitimate to ship goods by sea to a neutral port with the intention of transshipping them by land to a blockaded port. If such trade could be interfered with, it would mean that by maintaining an efficient maritime blockade of enemy ports, the belligerent would be permitted to impose upon neutrals a paper or a fictitious blockade as to overland trade with such ports. This would, in part at least. bring us back to the state of affairs which the Declaration of Paris sought definitively to terminate.

ALEXANDER HOLTZOFF.

³² Halleck (4th ed.), II, 221; Phillimore (3d ed.), III, 488, 505; Calvo, V, § 2903; Wheaton (4th ed.), 703.

THE RELATIONS BETWEEN THE UNITED STATES AND PORTO RICO *

(PAST, PRESENT AND FUTURE)

PART II

1. THE LEGALITY OF THE ACQUISITION

The question relative to the legality of the acquisition of Porto Rico by the United States involves the consideration of two different propositions: (1) the right of the United States, as a nation, to acquire territory generally; and (2) the power of the Federal Government to exercise that right according to the provisions of the Constitution. Looking at the question from this point of view, the legality of the acquisition may be considered under two different aspects: (a) the external or international, and (b) the internal or constitutional. Each of these two aspects of the question requires, of course, a separate study if not a complete and exhaustive discussion. We shall therefore examine them in their order, although to such extent only as the peculiar character and limitations of this article will permit.

(a) The International Aspect

Juridically speaking, the discussion of the external or international aspect of the acquisition of Porto Rico must be based upon the principles of public international law as accepted and acted upon by the so-called civilized nations of the world in their mutual relations for their reciprocal benefit and the preservation of peace, as far as possible, among themselves.

In this connection it is important to notice, in the first place, the nature of the title upon which the United States bases its claim to Porto Rico. This point becomes of special importance when it is considered that the beautiful island of the Caribbean has often been spoken of, either

^{*}Continued from the October, 1915, number, page 883.

expressly or by implication, even by high authority, as conquered territory, just as if the acquisition of it by the United States was legally founded upon a complete conquest. But this is not so. As already shown in the first part of this article, the United States came into military possession of Porto Rico by a combination of actual military operations and by consent of Spain as the result of a truce of war looking to the conclusion of a treaty of peace.⁴⁷ The consent of the native population of Porto Rico was of course given or necessarily implied in the reception accorded to the American forces by the people. 48 All this in law did not amount to a complete conquest; it was merely military occupation. Military occupation is only a belligerent act which does not involve the substitution of the legitimate sovereign. 49 A conquest, on the other hand, is the acquisition of complete sovereignty over a country by mere force of arms. Professor Hershey, in his very valuable work on the Essentials of International Public Law, 50 defines a complete conquest as "the incorporation of foreign territory, i. e., its complete and permanent subjection to the territorial jurisdiction of the conquering or occupying state, after its subjugation by armed forces. This incorporation must be shown by some act showing intention (such as a decree of annexation) and ability to maintain permanent possession." Disregarding entirely as irrelevant all problematical considerations as to the relative possibilities or probabilities of the Spanish-American War in respect to the Porto Rican campaign, and adhering strictly to the facts and law of the case, it would seem, therefore, improper to refer to the acquisition of the island as a mere conquest.

⁴⁷ This Journal, Vol. 9, pages 887 et seq.

⁴⁸ Ibid., page 890.

⁴⁹ La occupation est simplement un état de fait qui produit les consequences d'un cas de force majeure; l'occupant n'est pas substitué en droit au gouvernement légal. French Manuel de droit international pour les officiers de l'armée de terre, page 93, quoted by Westlake, International Law, II, page 95, note 3. Prior to the middle of the eighteenth century there was no distinction, either in theory or in practice, between a mere occupation and a complete conquest. It was first made by Vattel (liv. III, § 197), but the full consequences of this distinction were not drawn before the appearance of Heffter's (§ 131) remarkable work in 1844. Hershey, Essentials of International Public Law, page 408, note. The Santa Anna, Edewads, 180. See Oppenheim, Vol. I, Sec. 236 and Vol. II, Sec. 264.

⁵⁰ Sec. 171.

As a matter of law, the title of the United States to Porto Rico is founded exclusively upon the cession stipulated in Article II of the Treaty of Paris, heretofore mentioned: "Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies. * * *" 51

As a matter of history, perhaps, the cession may have been forced from Spain by the "inflexibility of the demand" of the United States, as the Spanish Minister for Foreign Affairs was pleased to characterize it.⁵² This, however, seems to be of no consequence under international law, according to which Spain, under the circumstance, was at liberty to accept or reject the demand of the United States. In point of fact it probably would have been of no avail to her to reject it owing to her inability to oppose the military forces of the United States. But this does not affect the question of the legality of the acquisition, inasmuch as there is a legal fiction that all cessions of territory from one nation to another are voluntary, whether brought about by armed coercion at the close of a war or by more ethical means during normal times of peace.⁵³

Moreover, as to the ethical aspect of it, we are inclined to believe that the purpose of that "inflexibility" was not exactly to obtain by force a rich gift from Spain simply for the aggrandizement of the United States. This would have characterized the acquisition as a mere spoil of war. As we have already suggested, ⁵⁴ we are inclined to believe that the cession of Porto Rico was demanded mainly in response to the clamor of the American people for the total expulsion of Spain from the Western Hemisphere and for the liberation of the Porto Rican people from Spanish domination.

Beyond that, the whole subject of the acquisition of Porto Rico finds its logical explanation in the peculiar psychology of war and its derivative phenomena. In this connection it may be noted that after a successful war, where the victor is in a position to impose conditions upon the vanquished for the restoration of peace, those at the head of the government are altogether too often carried away by the unfortunate inter-

⁵¹ This Journal, Vol. 9, pp. 906-907.

⁵² Ibid., page 897.

⁵² Hershey, op. cit., Sec. 174.

⁵⁴ This Journal, Vol. 9, pp. 896-897.

national practice of asking territorial compensations for the losses and expenses incident to the war, under such delusions as "assuming our real position in the world," "our plain duty," "fate," "manifest destiny," and other high sounding expressions of patriotic enthusiasm, which in the last analysis are not always inspired in the most perfect wisdom, deliberation and prudence. It is thus that in the Spanish-American War there is no solution of continuity between the purpose of the war and the cession of Porto Rico by Spain to the United States. And yet, if Spain had emphatically refused to cede Porto Rico and insisted that its fate should follow that of Cuba, the attitude of President McKinley might have been entirely different. Then he would have been confronted with the peculiar alternative of abandoning the "inflexibility" of his demand for an absolute cession of Porto Rico as inconsistent with the purpose of the war, or asking the people to abandon the great principle involved in the joint resolution of Congress of April 19, 1898, and continue the war for the mere acquisition of a few square miles of noncontiguous and entirely alien territory, and in that case the people would have been called upon to decide whether the purpose of the Spanish-American War was a purpose of liberation of oppressed peoples or the aggrandizement of the United States.

If the former had been the decision, it would have been enough that the fate of Porto Rico should follow that of Cuba. It would have been sufficient to stipulate in the treaty of peace that Spain should relinquish all claim of sovereignty over and title to Porto Rico, and that as the island was to be occupied by the United States, the United States should, so long as such occupation should last, assume and discharge the obligations that might under international law result from the fact of its occupation, for the protection of life and property. This stipulation would have eliminated Spain from the Western Hemisphere and at the same time would have given freedom of action to the United States in Porto Rico, as in the case of Cuba, for the purpose of administering it according to the peculiar necessities of the situation, clear from all constitutional entanglements, until the United States should judge it advisable and proper to turn over the government of Porto Rico to the Porto Ricans, as an independent government; or, if it were thought feasible and prudent from the American point of view, to formally annex

the island, with the full consent of the Porto Rican people, as an inseparable part of the United States, either as an organized territory, to be later admitted to complete statehood, or as a state of the Union.

As to the other alternative, it is sufficient to say that American conceptions of international ethics and right would never have sanctioned it.

Of course, there was present the possibility of a prolongation of the war, and Spain perhaps did not care to risk the consequences of it; perhaps she thought it was useless to try, perhaps she did not care, or perhaps it may have appeared all the same to her. But none of these things affect the legality of the acquisition under international law; they are merely questions of historical conjecture and nothing more.

As to the cession itself, it may be said that, whatever ethical or political reasons may exist to the contrary, it is a principle of the law of nations that territory of any description, whether populated ⁵⁵ or not, or wherever situated, ⁵⁶ may be made the subject of a transfer from one state to another, whether as the result of a public war, by treaty of peace, or by sale, exchange, gift, etc. In this respect it may be said also that the ordinary rules governing the transfer of private rights and property, with some very important exceptions, are quite applicable here. Of course, as observed by Rivier, ⁵⁷ the sovereignty over a territory and its inhabitants gives to the act of cession a peculiar character and greater importance than that which is attributed to a mere transfer of a piece of land. As an act of cession, the Treaty of Paris was equivalent to a deed of conveyance, ⁵⁸ by which the grantor, Spain, ceded to the grantee, the

⁵⁵ The cession of populated territory would seem to demand as an act of fairness and justice, that the sentiments of the inhabitants thereof towards the new sovereign should be consulted by means of what has been called a plebiscite. This practice, however, has not been adopted as a principle of international law and probably will never be, at least in respect to those cessions which are founded merely upon force. Hall, International Law, page 47; See Rivier, *supra*, Tome II, page 439.

In America the Monroe Doctrine stands as a formidable protest against this well settled principle of international law.

[™] Principes du Droit des Gens, Tome I, page 197.

A treaty of cession is a deed of the ceded territory by the sovereign grantor. J. C. Bancroft Davis' Rules for the Construction of Treaties, quoted by Butler in his admirable work entitled Treaty Making Power of the United States, Vol. II, pp. 145-148, rule X.

United States, the Island of Porto Rico and other islands then under Spanish sovereignty in the West Indies, etc.

Just as in public law it is one of the principal rules affecting the transfer of property that the parties shall be legally competent to effect it, so it is also a rule of international law that the parties that intervene in a cession of territory shall be legally competent, that is to say, sovereign and independent states, which alone gives them the required authority to cede or acquire territory in an international sense.⁵⁹

As an independent and sovereign nation, the United States has, as any other, the right to acquire territory by any and all the methods known to and recognized by the law of nations, such as by discovery, conquest or treaty. This right, which must be distinguished from the constitutional power of the Federal Government to exercise it, is possessed and can be exercised by the United States, as a nation, in the same manner and to the same extent as it is possessed and can be exercised by every other independent and sovereign Power, as a general attribute of sovereignty belonging to all sovereign and independent states. As above suggested, the Constitution might or might not restrict or altogether deny to the Federal Government the power to exercise this right of sovereignty; but that would not affect the right itself to acquire territory, which appertains to the United States in its capacity of a sovereign and independent state. Spain, on the other hand, as a sovereign and independent nation

⁵³ "The right of sovereign Powers to cede territory to, and to acquire territory from, other sovereign Powers, with the accompanying transfer of sovereignty thereover, is one of the elementary principles of international law. It is essential, however, that the contracting Powers should be fully sovereign in order to act either as transferer or transferee." Butler's Treaty Making Power of the United States, Vol. I, Sec. 43.

⁶⁰ Jones v. United States, 137 U. S. 202, by Gray, J. See Butler's Treaty Making Power of the United States, Sec. 32, at page 59.

61 "It may be laid down," says Pomeroy (International Law, Sec. 115, Woolsey's ed.), "as an universal doctrine of the international law, that every sovereign independent state may transfer or acquire territorial possessions. I say this is a doctrine of the international law, which does not concern itself with the internal organization of countries, and the powers committed to governments, or to any other department thereof. Whether, therefore, any particular nation may transfer its territory or acquire territory from another is a question to be answered by examining the constitution of the country, the functions and capacities conferred upon its rulers. This belongs entirely to public and not to international law."

also, had the right to cede any part of her territory, and so could, under the law of nations, cede Porto Rico to the United States, provided she had a good title to convey, whether as legitimate compensation for the losses and expenses of the United States incident to the Spanish-American War, or merely as a forced gift to prevent the prolongation of that war.⁶²

Considering the treaty itself, it may be said that it was properly drawn and executed according to the customary practice of nations, and as the United States was already in actual and complete possession of the island since the retirement of the Spanish troops, there was nothing that either country could do in order to make the transfer more effective.

The legality of the acquisition, however, also depends upon whether Spain had any title to convey to the United States and whether the United States had not estopped itself by the declarations contained in the joint resolution of Congress of April 19, 1898, to assert any right of sovereignty over or title to Porto Rico derived from Spain.

As to the first part of this proposition, it may be laid down as a universal principle of law, whether public or international law, that in every cession or grant, whether of a compact territory of about 3,500 square miles or a small tract of land of merely a few acres in extent, the grantee or cessionary takes exactly the same title which the cedent or grantor had at the time of making such a cession or grant. The grantee, to repeat a homely expression commonly used by the courts, stands in the shoes of the grantor; he succeeds him in his rights. This principle is so well settled and recognized, that it is hardly necessary to cite any authority in its support.

In regard to it, however, it is enough to say, at least, as a legal proposition, that Spain became entitled to Porto Rico in exactly the same manner that she had become entitled to all her possessions in America, namely, through discovery and conquest. In point of discovery Porto

⁶² In order to satisfy constitutional requirements, the Spanish Cortes passed a law authorizing the government to relinquish all rights of sovereignty over and to cede territories in the provinces and possessions beyond the seas, in conformity with the preliminaries of peace. This law was sanctioned by the Queen Regent of Spain on Sept. 16, 1898. For the Spanish text of this law and the melancholy preamble of it submitted by the entire Cabinet of Señor Sagasta, see Olivart, Colección de los tratados, conventos y documentos nacionales, etc., Vol. XII, pages 455–456.

Rico is older than the United States, since it was discovered by Columbus in 1493. Its conquest, however, was not begun by the Spaniards until early in the sixteenth century under the leadership of Don Juan Ponce de León, the persistent and undaunted searcher for the chimerical fountain of perpetual youth, and of whom it has been written as an epitaph upon his tomb:

Nole sub hac fortis requiescunt ossa Leonis Qui vicit factis nomina magna suis. 68

The Spanish title was of course founded upon the public international law of the period respecting the discovery and occupation of land. The application of this law in America has been explained by the great Chief Justice Marshall, as follows:

On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as people over whom the superior genius of Europe might claim an ascendancy. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new by bestowing on them civilization and Christianity in exchange for unlimited independence. But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.

The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.⁶⁴

As to the second part of the above proposition, namely, whether the United States had not estopped itself by the declarations contained in the

⁶³ "This narrow grave contains the remains of a man who was a Lion by name, and much more so by his deeds."

⁶⁴ Johnson v. McIntosh, 8 Wheaton, 543-572.

joint resolution of Congress of April 19, 1898, from asserting any right of sovereignty over or title to Porto Rico derived from Spain, it is sufficient to say that the legal doctrine of estoppel has no clear application here.

While there may be something pathetic, disappointing and paradoxical in the acquisition of Porto Rico as a direct cession from Spain, especially if it is to be held indefinitely as a mere colony or possession of the United States, it might yet be argued that the solemn declarations made by Congress in the joint resolution had no direct reference to Porto Rico, that they were made in response to special conditions obtaining in the Island of Cuba, and that in consequence of this circumstance they must be taken as referring to the Island of Cuba only. In denying, by implication, the sovereignty of Spain in Cuba, the United States might, perhaps, in point of law, have precluded itself from asserting any right of sovereignty over or title to the Island of Cuba, for the simple reason that to do so would have operated as a fraud upon the Cubans, whose position was undoubtedly affected by the declarations of the said joint resolution of Congress. To apply this doctrine to the case of Porto Rico would necessitate the extension of a further doctrine, namely, that since Spain held Porto Rico by the same title as it did Cuba, the denial of her sovereignty, jurisdiction and control over Cuba was equivalent to a denial of her sovereignty, jurisdiction and control over Porto Rico.

It is a question, however, whether these technicalities could be carried successfully to such an extent. The Porto Ricans may, perhaps, have materially altered their position on account of the famous declarations of the said joint resolution of Congress, with the possible expectation of obtaining that freedom and independence to which all peoples are justly and legitimately entitled and for the attainment of which they had, as we have already seen, struggled for over half a century; but, from the point of view of international law and practice, it would be hardly available to contend that the sovereignty of the United States over and title to Porto Rico are legally impaired to any extent by any such considerations adverse to the same. In the present state of the world, the usages and laws of nations do not admit of any such refinements of right, equity and justice. Whether these things will ever have any bearing upon the future relations between the United States and Porto Rico, depends not so much upon the question of law, but rather upon the high

sense of honor of the American people and the future development of circumstances which will call forth a practical application of the American theory of a square deal to the solution of this national problem. We have said "national" problem advisedly, because the Porto Rican problem is a purely national problem, even though, eventually, it may require the establishment of another little republic in the Caribbean under the benevolent protection of the United States.

(b) The Constitutional Aspect

So far we have considered the question of the legality of the acquisition of Porto Rico by the United States as an international proposition, regarding the United States as a member of the family of nations. Considering it now as a constitutional proposition, the question, of course, involves the consideration of the power of the Federal Government, under the Constitution, to exercise the right of the United States, as a nation, to acquire territory generally or more specifically by treaty. The question of the right itself, we have seen, is not constitutional but international.

Whether the Federal Government has any power to exercise that right is not by any means a new question in constitutional law. It has been made, at different times in the history of this country, the subject of, and occasion for, many elaborate discussions and very earnest and spirited controversies by and among the most prominent and distinguished men of past and present generations in the United States.

As it is well known, there are, and always have been, in the United States two different schools of constitutional construction: the narrow one, which would exclude from the powers of the Federal Government all such as are not expressly given to it by the Constitution, except those which are necessarily implied for their exercise; and the broad one, which concedes to the Federal Government not only all such powers as are expressly given or which are necessarily implied for their exercise, but all those which are implied in the nature of the Union and in the character of the government created by the Constitution. The one tends to preserve the so-called States' rights by holding "that the unit of sovereignty is the State, which is a body politic; that the Constitution of the United States is a compact between these sovereign units and bodies

politic, making a Federal Union between the States; that the organic Federal force of the Federal Union is the Federal Government, to which, by the Constitution of the United States, the States, separately and in combination, have delegated powers, reserving the residuum of powers not so delegated to the United States, nor prohibited to the States, to the State governments, or to the people of the States, respectively." The other school tends to make a more perfect government in the national sense by asserting "that the Union is itself the unit of sovereignty, of which the States are subordinate parts, to which certain powers belong under the Constitution of the United States, while the main powers belong to the National Government." Under the first view the Union is a multiple of units; under the second, the Union is a unit of which the States are fractions.⁶⁵

As the Constitution contains no provision expressly giving to the Federal Government the power to acquire new territories, and since, on the other hand, this power is not necessarily implied in that instrument for the legitimate exercise of any other powers conferred upon the Federal Government, as such, it is apparent that, under the narrow doctrine of constitutional construction, the acquisition of Porto Rico by the United States would not have the sanction of the Constitution. It would be ultra vires, and therefore, constitutionally illegal.

At the present time, however, it is rather doubtful whether any such narrow doctrine of constitutional construction would find supporters in this country, at least in respect to the power of the Federal Government to acquire territory generally for the United States. This power, as above suggested, is derived directly from the nature of the Union and the character of the government created by the Constitution itself.

It is a fact already established and accepted that the United States is a nation, that is to say, that the people of the United States in their sovereign capacity as a people, have constituted themselves into a body politic or distinct international entity with a legal claim, as an independent state in the family of nations, to possess, and possessing full power to levy war, conclude peace, make treaties and "do all other acts and things which independent states may of right do." The Federal Government is in this respect, the exclusive representative and embodiment

⁶⁵ Tucker on the Constitution, Vol. I, Sec. 106, page 178.

of the entire sovereignty of the nation in its united character; ⁶⁶ and although there is no provision of the Constitution which expressly confers authority upon the Federal Government to enlarge the national territory or domain of the United States either by purchase, conquest or treaty, it may well be said, that as an incidental power the constitutional power of the Federal Government to exercise the international right of the United States to acquire territory would seem so naturally to flow from the sovereignty confided to it, as not to admit of very serious question.⁶⁷

It would be difficult to conceive why the exercise of this common attribute of sovereignty enjoyed by all nations, the power to acquire territory, should be denied to the Federal Government without an express prohibition in the Constitution itself. But if this power does not flow from the general sovereignty deposited in the Federal Government as the sole representative of the nation, it must be derived from the treaty-making power and the power to declare and carry on war, as the incidents of these powers are those of national sovereignty which belong to all independent governments, 68 or as said by the great Chief Justice:

The Constitution confers absolutely on the government of the Union the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.**

Pedro Capó-Rodriguez.

- * In re Neagle, 135 U.S. 84; dissenting opinion of Justice Lamar.
- ⁶⁷ Story on the Constitution, Vol. II, Sec. 1287, page 175.
- 88 Mormon Church case, 136 U.S. 42.
- ²⁰ American Insurance Company, etc., v. Canter, 26 U. S. 511. See upon this general subject the remarks of Mr. Justice Brown in delivering the opinion of the court in the case of De Lima v. Bidwell, 182 U. S. 1, at pp. 194-196; see also the concurring opinion of Justices White, Shiras and McKenna in Downes v. Bidwell, 182 U. S. 244, at pp. 302-305.

(To be concluded in the next number.)

SHOULD THE MONROE POLICY BE MODIFIED OR ABAN-DONED?

I. WHAT IS THE MONROE POLICY?

There is probably no principle of American politics, which has exercised a more powerful influence or has impressed itself more forcibly upon the American imagination than the Monroe Policy. Throughout our diplomatic history it has set the standard by which our whole foreign policy has been tested. In its defense we have risked war with the most powerful of European nations. It has come to be regarded with a sort of religious veneration, and in the popular mind it ranks in importance with the Declaration of Independence.

But in these latter days irreverent scoffers have endeavored to prove that this principle that we have worshipped is unsound. There has been more discussion of the Monroe Policy in the last two years than ever before. Is the Monroe Policy an "obsolete shibboleth" as charged by Professor Bingham? ¹ Is our devotion to this cardinal principle of American diplomacy "mere slavery to rhetoric and sentiment"? ² Is this lamp which has guided our feet for almost a century nothing more than a will-of-the-wisp, an "ignis fatuus"? ³ It is high time that we should settle this question, for if all these years we have based our foreign policy on a false principle, assuredly the day is at hand when we shall reap the results of our errors.

There is no question that the use of the word "doctrine" to represent what is essentially a matter of policy, has been responsible for much confusion of thought.⁴ It has distracted attention from the real issues, viz., whether the United States should follow the policy of protecting

¹ Bingham, The Monroe Doctrine, an Obsolete Shibboleth.

² Sydney Brooks, Fortn., 76:1021.

³ Henderson, American Diplomatic Questions, p. 448.

⁴Hershey, Annals, 11:365; Pollock, cited in Harp. W., 46:1978; Mahan, R. of R's. 27:345.

Latin American independence from Europe, and if so, what measures it should take in support of that policy. It is responsible for the popular obsession that the Monroe "Doctrine" is in truth international law. It has lulled the American people into a false sense of security. They do not think of the Monroe "Doctrine" as a policy to be defended, but as a principle, to which all nations owe allegiance, and which will enforce itself. For the purposes of this discussion, therefore, we shall drop this troublesome and confusing word, and speak of the "Monroe Policy."

The Monroe Policy receives its clearest and most authoritative exposition in the words of President Monroe himself: (1) "* * * the American continents * * * are henceforth not to be considered as subjects for future colonization by any European Power; (2) * * * we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition toward the United States." In other words, the Monroe Policy is that policy by which the United States, for reasons of its own, opposes any acts that might be interpreted as "oppressing" or "controlling the destiny of" any Latin republic.

In pursuance of this general policy, as occasion has arisen, we have declared certain well-defined classes of political acts to be within the category of acts that we regard as "oppressing" or "controlling the destiny of" Latin American states. The Monroe Policy has not been "extended;" it has not changed. It is the same policy, no more and no less, but the "applications" we have made of that policy have changed somewhat. For example, there is no longer a Holy Alliance, breathing threats against the Latin states in the name of the divine right of the Bourbon Spanish king; that particular form of "oppression" has gone forever. But the claims, financial and otherwise, of European Powers against weaker nations of this hemisphere present a problem no less pressing and no less dangerous. On the objective side, the Monroe Policy has undergone a complete transformation. On the subjective side, it is the same policy, maintained for the same reasons and based upon the same rights, now as in 1823.6

Message of Dec. 2, 1823, cited in Moore's Digest, sec. 936.

Root, The Real Monroe Doctrine, Proc. Am. Soc. Int. Law, 1914, p. 6.

According to Mr. John Bassett Moore the category of acts that we now regard as "oppressing" or "controlling the destiny of" American republics is as follows: (1) European intervention in America for the purpose or with the effect of forcibly changing the form of government or controlling the free will of the people; (2) permanent acquisition of new territory or dominion in America; (3) enlargement of present boundaries of European colonies in America or transfer of these colonies to any other European Power; (4) an interoceanic canal in Central America under European control.⁷

There is a great deal of loose thinking about the Monroe Policy, which usually passes unchallenged and which it is necessary to avoid. The Monroe Policy does not mean that the South American continent is in any way subject to us or to be controlled by us. Neither does it mean that European governments must not make war upon any American state, nor that the diplomatic relations between European and American states are subject to our supervision and control. All kinds of wild theories about Latin America invoke the sanction of the Monroe Policy. The alleged violation of the neutrality of certain South American republics during the present war has resulted in formal complaint to the United States in the name of the Monroe Policy. It cannot be overemphasized that the Monroe Policy is simply the policy by which the United States opposes any acts that it considers as "oppressing" or "controlling the destiny of" the Latin American states, and that anything else should not be allowed to masquerade as a part of the Monroe Policy.8

In asserting the Monroe Policy, the United States has acted under the right of self-protection, a right which is legally recognized as necessary to sovereignty itself. The Hon. Elihu Root said: "The doctrine is not international law, but it rests upon the right of self-protection and that right is recognized by international law." The Hon. John W. Foster said: "It may be said that the principle which underlies the Monroe Doctrine—the right of self-defense, the preservation of the peace and

⁷ Moore's Digest, sec. 968.

See John W. Foster and Leo S. Rowe, Proc. Am. Soc. Int. Law, 1914, pp. 119, et seq.

^{*}Vattel, Law of Nations, Book I, sec. 16, p. 61.

¹⁰ Proc. Am. Soc. Int. Law, 1914, p. 16.

safety of the nation—is recognized as an elementary part of international law." ¹¹

The question of legal justification, be it said, arises only when a specific act or intervention under the policy is performed or contemplated. The question then presents itself, Is the proposed action of the European government, which we desire to prevent, an action that would be dangerous to our peace and safety? If this question is answered in the affirmative, the right of self-protection is a sufficient legal justification for an intervention to prevent the occurrence of the act.

Dr. Herbert Kraus, of Leipsig, distinguishes between immediate and remote danger to the state, and argues that only intervention to prevent an immediate danger is justified by the right of self-preservation or self-protection. He says:

Accordingly, one will have to limit the application of the interventions based upon the right of self-protection to such measures and only such, as seem necessary to ward off a present danger to the inviolable permanency of the intervening state.¹²

Of course, the distinction is one that in practice is difficult to draw. Obviously the Monroe Policy is of no value to the United States did it not prevent conditions that if left alone would be a "present" and "immediate" danger to the United States. The distinction is a wholesome one in that it emphasizes the narrow and well-defined limits of the Monroe Policy. If the Monroe Policy is defined as the policy which under certain circumstances prevents conditions that would be a present and immediate danger to the United States, the right of self-protection, even under the restricted definition of Dr. Kraus, is sufficient legal justification for any intervention under that policy.

- ¹¹ Century of American Diplomacy, p. 477.
- ¹² Monroedoktrin, p. 373: "Nach alledem wird den Kreis der mit dem 'Selbsterhaltungsrecht' zu begründenden Interventionen auf alle solche Massnahmen und nur solche zu beziehen haben, die zur Abwehr einer gegenwärtigen Gefahr für den unverletzten Bestand des intervenierenden Staates notwendig erscheinen."
- Cf. Creasy, p. 291: "Clearly the danger in order to amount to a justification for a war of intervention must be a danger which directly affects the vital and substantial interests of the foreign state."
- Cf. Hershey, p. 150: "To justify intervention on this ground, the danger must be, of course, direct and immediate and not merely contingent and remote."

In a certain sense the Monroe Policy is the assertion of the legal equality of the Latin republics with all other nations, however powerful, and to that extent it guarantees to them a right which is unquestionably theirs in international law. Vattel said: "A small republic is no less a sovereign state than the most powerful republic." ¹³ Chief Justice Marshall said: "Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another." ¹⁴ The Hon. Elihu Root said recently: "The fundamental principle of international law is the principle of independent sovereignty. * * * The Monroe Doctrine * * * asserts the right." ¹⁵

But let us not be deceived. Although the right of legal equality is a part of international law, in practice it is limited by the rights of other sovereign states. ¹⁶ Violation of international obligations may forfeit the right to freedom from foreign interference. ¹⁷ In the last resort a nation pays the penalty for wrongdoing by giving up its territory. But the Monroe Policy asserts that the territory of any Latin republic must never be relinquished to a European Power, for in that case the "destiny" of that republic would be "controlled" by that Power.

It is conceivable that as a result of wrongdoing by an American republic, a European Power might be acting entirely within its legal rights in assuming a superior political relation to an American republic. The policy of denying to the whole world the right of "controlling the destiny" of any Latin republic under any circumstances may conceivably be in direct conflict with legal rights possessed by other Powers. The Monroe Policy, while based upon legal rights, will not in all cases square with international law unless we take upon ourselves the responsibility of seeing that no American republic performs an act that would justify the injured Power in taking territory. 18

- ¹³ Law of Nations, Preliminaries, sec. 18, p. 52,
- ¹⁴ In the case of the Antelope, cited 10 Wheaton, 66, 122.
- 15 Proc. Am. Soc. Int. Law, 1914, p. 13.
- 16 Cf. Root, Proc. Am. Soc. Int. Law, 1914, p. 17.
- ¹⁷ Roosevelt, Message of 1904: "It is a mere truism to say that any nation, whether in America or elsewhere, which desires to maintain its freedom, its independence, must ultimately realize that the right of such independence cannot be separated from the responsibility of making good use of it." Moore's Digest, sec. 968.
- 18 Prof. Paul S. Reinsch, now Minister to China, said: "Such a State answers in the last resort by its territorial sovereignty, which in the case of Latin America is de-

These circumstances make necessary another policy, a policy of "enforcement," which may be defined as the policy which aims to prevent conditions in an American state that would justify foreign control. This may be done in several ways,—by protest, by diplomatic pressure, by the use of good offices, and, in extreme cases, by armed intervention. In so doing we are acting under a variety of legal rights. The right of self-protection, which is the basic warrant for the Monroe Policy itself, may be invoked in certain cases of enforcement, although obviously the danger to be guarded against by the enforcement policy is more "remote" than the danger guarded against by the Monroe Policy. In cases where our own citizens, as well as those of other Powers, have been mistreated, our intervention could be based upon the fundamental right of protecting our own citizens abroad. 19 Much good can be done by the use of our good offices, and our right to do this under any circumstances is unquestioned.²⁰ If treaties have been violated, we have the right to intervene to compel the observance of good faith.²¹ Besides rights already in existence, we can acquire new rights by treaty, rights to intervene under certain circumstances, as in Cuba, or to supervise finances, as in San Domingo. These rights, when obtained by treaty have all the force of international law.

There are two policies, therefore, the Monroe Policy and the "enforcement" policy, and there are two issues that must be squarely faced:

(1) Should we abandon the Monroe Policy, by which the United States declares that any foreign control over the territory of any American republic would be regarded as an unfriendly act?

(2) Should we abandon the "enforcement" policy, viz., the acts of protest, good offices and intervention, designed to prevent any American republic from committing such acts as might make it liable to seizure of territory or loss of sovereignty? ²²

clared inviolable. The United States, by shielding the southern republics in this manner, is itself assuming a certain responsibility for them." Independent 55:10.

19 Hershey, Essentials, p. 150.

²⁰ Conventions of the Hague Conferences of 1899 and 1907, Art. 3: "The exercise of this right can never be regarded by either of the parties at variance as an unfriendly act."

²¹ Hershey, Essentials, p. 150.

²² Prof. Leo S. Rowe said: "* * it is a matter of vital importance to our position among the nations that new principles of our foreign policy should not masquerade as integral parts of the doctrine, but should be formulated as positive

II. SHOULD THE MONROE POLICY BE ABANDONED?

The United States maintains the Monroe Policy for the same reasons that European Powers maintain the balance of power, offensive and defensive alliances, and until lately the Concert of the Powers.²³ While on the objective side, these policies bear no resemblance to each other, the underlying purpose is the same, namely, to protect various nations from conditions which they regard as dangerous to their peace and safety. The question which must be answered in discussing the Monroe Policy is this, Does the Monroe Policy prevent conditions that would be dangerous to us, in other words, is the maintenance of the Monroe Policy necessary to our peace and safety?

Let us first raise the question whether any European nation or nations have ambitions in South and Central America that contemplate the overthrow of the existing governments or the seizure of their territory. Are we conjuring up terrors that do not exist? Are we, like Don Quixote, employing our chivalry for the purpose of fighting windmills?

In the past it has been the Monroe Policy which has prevented "interposition for the purpose of controlling the destiny" of the Latin states. It was the firm attitude of the United States in 1823, with the support of Great Britain, that prevented the subjugation of the former Spanish colonies. It was the protest of Secretary Seward, backed by the forces of the Union Army, that caused the withdrawal of the French troops from Mexico in 1865 and prevented the establishment of a Mexican empire under European control. It was the determination of the United States to allow no European Power to acquire territory in the Isthmus that prevented the building of an Isthmian Canal under British control. It was the Monroe Policy that caused England to submit the boundary dispute of 1895 with Venezuela to arbitration, and that caused the joint intervention of 1902 for the collection of claims to stop short of the permanent occupation of Venezuelan territory.²⁴ How many ambitious projects for European expansion in South and Central America have

principles supplementing its negative prohibitions." Proc. Am. Soc. Int. Law, 1914, p. 131.

²² See Hershey, Annals (1898), 11:362.

²⁴ Refer to citations of diplomatic correspondence on these cases in Moore's Digest.

never been formulated because of the opposition of the United States we shall never know.

The spirit of colonial expansion still exists.²⁵ The rich, almost untapped resources of South America and the tremendous naval importance of territory in Central America and the West Indies still tempt the ambitions of European military and colonizing Powers. According to Mr. Hamilton Holt: "Nothing but the attitude of the United States, standing firmly upon the Monroe Doctrine, has, in our judgment, prevented the acquisition of territory in South America and in the neighborhood of the Panama Canal in recent years by certain nations of Europe." Even Professor Snow said in guarded language: "It is by no means improbable that did a favorable opportunity offer itself, they would attempt to gain vantage ground on the continents or islands of this hemisphere." ²⁷

Since 1895, England, it is true, has practically ceased to oppose the Monroe Policy. Sir Frederick Pollock ²⁸ and Admiral Lord Charles Beresford, ²⁹ representing the most intelligent statesmanship of Great Britain, go so far as to advocate an explicit avowal of the Monroe Policy by Great Britain. From Austria and Russia, once the leading Powers of the Holy Alliance, there is no longer any danger. The interests of Russia are focused elsewhere, and Austria is obviously not inclined to undertake aggression in South America on her own account. The German Empire, however, is a young and ambitious power, filled with the military spirit, possessed of the most perfect military machine and the greatest power of organization in the world, and greatly desirous of colonial empire. South and Central America would offer a fertile field for her ambitions. Bismarck himself regarded the Monroe Policy as a "dog in the manger" policy, as a "piece of international impertinence." ³⁰

- ²⁶ Harper's Weekly, editorial, 47:139: "In the 20th Century we have as much cause to fear a league for territorial aggression and for spheres of influence as in the 19th Century there was reason to fear the Holy Alliance."
 - ™ Independent, 61:1119.
 - ²⁷ Treaties and Topics, p. 423.
 - 28 19th Century, 52:553. See also his book, The Monroe Doctrine.
- ²⁹ Harp. W., 47:139. See also Edgington, p. 286. The Duke of Devonshire said in 1903: "Great Britain accepts the Monroe Doctrine unreservedly." Proc. Am. Soc. Int. Law, 1914, p. 9.
 - 20 The best discussion of this subject is in Edgington, Ch. 17 and 18.

Several of the southern states of Brazil and the northern states of Argentina have been peopled by German immigrants. These Germans have not become Argentinian or Brazilian in their traditions or language. They cling to the German customs, German language and German political ideals. They are absorbing the native population, rather than assimilating with it. At some future time it is not unlikely that particularism may triumph over national unity in these republics, and that these Germans, alien in language, ideals and traditions, may secede and demand the protection of the German Empire.³¹

The Germans at home would probably accept with enthusiasm the opportunity to claim these millions of Germans and the fertile lands they have occupied. The *Deutsche Post* said in 1905:

We observe that a love for individual states is growing at the expense of Brazil's unity. We should not wonder * * * if the states of Parana, Santa Catharina and Rio Grande do Sul, should some day declare for secession and independence. Then a new outlook would be opened to Germany.³²

Dr. Leyser, a German traveller and publicist, in his book on Santa Catharina says: "Nowhere are our colonies (sic) those loyal offshoots from the mother-root, so promising as here * * * Surely to us belongs this part of the world." ³³ Dr. Herman Meyer says in the Kolonial Zeitschrift: "The German spirit is ineradicably grounded in the hearts of these colonists, and it will undoubtedly bear fruit, perhaps a rich harvest, which will not only prove a blessing to the colonies, but to the fatherland." ³⁴

One of the ambitions of the Pan-Germanist party in the German Empire is the annexation of Denmark and Holland. The Danes and the Dutch, say the Pan-Germanists, are Germans in race and speech, and belong within the great German imperial plan. The geographical situation of Denmark and Holland would make them very profitable acquisitions from a military and naval point of view. They have splendid harbors and commerce that would be extremely useful for purposes

²¹ Edgington, p. 136.

¹² Cited in the Outlook, 79:366. The italics are mine.

[&]quot; Cited in Edgington, p. 137.

³⁴ Cited in Edgington, p. 137.

of German trade.³⁵ Such acquisition in Europe would not be particularly objectionable to the United States, but Holland still holds Dutch Guiana and the Island of Curaçoa, and Denmark the archipelago of the Danish West Indies. In the hands of small nations, without serious military and naval ambitions, these islands are not dangerous to us. But we could not view with equanimity the transfer of these colonies to a Power so aggressive and militaristic in its aims as the German Empire.

The German press is violent in its criticism of the Monroe Policy. A fair sample of German editorial opinion comes from the pen of Herr von Dirksen-Bonn, the Berlin editor, in the *Grenzboten* of April 10, 1912: "It must be recognized that a firm and self-possessed policy must be adopted toward the United States on account of its Monroe Doctrine. It should be carried out even if the Americans did not shrink from war."

Mr. Edgington gives the results of a set of interviews on the Monroe Policy with representative Germans. While he found the merchants and bankers not inclined to oppose it, he found that the professors, politicians and statesmen were almost unanimously opposed. If Germany should succeed in an attempt to force the United States to abandon the Monroe Policy, rival Powers would not neglect the opportunity to reap part of the harvest. Although probably not inclined to undertake to overthrow the Monroe Policy themselves, they would not permit Germany to claim the South American continent. Every world Power would be forced into competition for territory in America, to avoid being hopelessly left behind in world politics.

The United States would be helpless. If the Monroe Policy were beaten down by one nation, we could not enforce it against another. The forces of European aggression in South America once loosed, it would be beyond our power to check them or to confine them within

³⁴ Harp. W. 47:140. Cf. Edgington, p. 141.

[▶] P. 277.

³⁷ Senator Lodge in a speech in the Senate in May, 1900: "I am by no means certain that some European nation, perhaps one whose navy is now receiving rapid increase, may not test the Monroe Doctrine, and we may be called upon to protect the doctrine in Brazil or in some other South American country. I am not conjuring up fancies." *Cf.* Edgington, p. 285.

arbitrary limits. We would witness a struggle for possession of these territories such as characterized the partition of Africa. If we should abandon the Monroe Policy in the slightest degree, the opening thus made would be widened and deepened by the resistless force of a flood which would inundate all Latin America. Prof. Paul S. Reinsch, now Minister to China, speaks very plainly on this point. He says:

Should we allow questions of territorial sovereignty to be settled in South America in the ordinary manner, should we leave South American States to their own devices, the *scramble* for South America would begin overnight.³⁹

The question that we must answer is this: Would South America, colonized extensively by European Powers, be a danger to our peace and safety? Again we are forced to answer in the affirmative. The neighborhood of colonial possessions of rival military Powers would be dangerous to us in two ways: (1) the increased difficulty in maintaining our neutrality and our traditional policy of aloofness from the quarrels of European Powers; (2) the advantage that foreign Powers would have in any war with us that might arise, on account of the possession by them of territory that could be used as naval and military bases of attack.

Since the days of Washington's Farewell Address, we have maintained as the very essence of our foreign policy our neutrality in European struggles. Under this wise precept, the United States has remained a non-military Power, with no entangling alliances, and taking no part in the politics of the European continent. Under this wise policy, we have built up our commerce and industry, and developed our internal resources. It is responsible for the distinctive non-military character of our civilization.

We have had some experience during the present war of the difficulty of pursuing a neutral policy, even when the territories of the belligerents are 3,000 miles across the Atlantic. The question of our rights and

²⁸ Cf. Secretary Olney's note to the American Ambassador at London, July 20, 1895: "What one Power was permitted to do could not be denied to another, and it is not inconceivable that the struggle now going on for the acquisition of Africa might be transferred to South America." Cited in Moore's Digest, sec. 966.

³⁹ Independent, 55:9.

duties as a neutral has been perplexing. The proper methods of search, the definition of contraband, the use of neutral flags and other questions have provoked an animated controversy with England. The German use of submarines to destroy British commerce, with its accompanying difficulties according to present standards of international law, and the sinking of American ships in the "war zone," have created conditions that may easily lead to the abandonment of our neutral position. All of these matters are extremely difficult of adjustment; a single false step may force us into war. Time will develop other occasions for controversy with belligerents over our rights as neutrals.

These difficulties would be increased manyfold by the abandonment of the Monroe Policy. If conflicting ambitions are even now strong enough to plunge the military Powers of Europe into the greatest war of history, the rivalry of these same nations for possession of the imperial domains of South and Central America would produce new grounds of conflict. If the lions of Europe and the lambs of Latin America could not lie down together in peace, it is not likely that rival lions could attack a flock of lambs without quarreling over the plunder. The partition of South America would introduce an era of conflict unparalleled in history.

Not only would there be increased grounds of conflict, but the difficulties of our neutrality would be increased by proximity. When France possessed Canada and England the thirteen colonies, the frequent wars between the rival nations raged as fiercely in America as in Europe. Such would be the case with European colonies in South and Central America were the mother countries to become embroiled. The conflagration would extend into our front dooryard. Our vital interests would become involved in every war of world importance, and alliances and counter-alliances, with all their accompanying burdens of militarism and crushing taxation, would become the order of the day.⁴⁰

⁴⁰ Admiral Mahan: "Such a condition if realized brings every European contest to this side of the Atlantic and the neighborhood of disputes as of fire is dangerous." R. of R's, \$7:345.

Prof. Reinsch: "Our peace is certainly dependent upon maintaining the territorial integrity of the South American states as against Europe." Independent, 55:9.

Cf. Kraus in Annals, 54:107, also Harp. W. 47:772.

Theodore Roosevelt, with his usual clear insight and power of trenchant expression, said in his Hartford speech:

If the Monroe Doctrine had not been steadfastly maintained, the United States, in all probability, would have been drawn into the present European war * * * although without any interest in it * * * The peace of the western hemisphere largely depends upon the preservation of this doctrine.

Critics of the Monroe Policy frequently assert that the fact that Canada and the United States have taken no military precautions against each other is proof that the neighborhood of European colonies would not be dangerous to us. ⁴² Such critics fail to consider that the foreign policy of England does not conflict with that of the United States at any important point, and consequently the possibility of war between the two nations is extremely remote. Moreover, Canada could not be forced into war with the United States by England, even were the two nations to become embroiled. The political arrangement between Canada and the British Empire would not continue one moment longer than the interests of Canada were served by it. The interests of Canada alone can never demand a war with this nation. It is not surprising, then, that the Canadian border is not fortified, and that fact bears no relation to the general problem.

We are accustomed in bursts of Fourth-of-July eloquence to declare that the United States is in danger of war with no nation. Being consciously a peaceable people, desiring only to be let alone, we assume that all other nations will respect our attitude and treat us accordingly. We neglect the simplest and most obvious military and naval precautions because of a more or less nebulous faith that the age of peace and disarmament is at hand, and that a war in which we may have to defend our national safety is impossible. With all due respect for those idealists who with their eyes in the clouds neglect the pitfalls at their feet, and imbued as firmly as they with the hope that the day of universal peace may come, we should contradict the most obvious lessons of history were we to leave out of account the possibility of a war in case some

 $^{^{41}}$ Speech at State convention of the Progressive Party, Hartford, Conn., August 15, 1914.

⁴³ Sydney Brooks, Fortn., 76:1021.

ambitious military Power should attack us. We may safely lay down the principle that so long as Krupp continues to manufacture 42 centimetre guns, and DuPont continues to produce powder, these munitions will be used for the purpose for which they were made, and that until the world supply of plough shares is glutted by the transmutation of swords and sabres, we must not neglect the precautions of safety in time of war that common sense would direct and naval strategy demand.

We cannot afford, therefore, to discontinue a policy that prevents European Powers from acquiring naval bases near our coasts and harbors. We must not put into the hands of possible enemies powerful weapons to use against us. We have made the Monroe Policy all the more necessary because of the construction of the Panama Canal, the neutrality of which we are compelled to enforce. It would be the height of folly for the United States to allow ambitious naval Powers to acquire territory that could be used as a basis of operations against the Canal itself, or against our own coasts and harbors. The day has not yet arrived when we can safely neglect these obvious naval precautions.⁴³

We cannot escape the conclusion, therefore, that the United States would put itself in great and needless danger were it to abandon the Monroe Policy and permit European nations to pursue colonial policies in South and Central America. For our own protection in time of war and to preserve our character as a neutral nation, it is necessary that the western hemisphere should continue to be occupied by self-governing states, in whose quarrels we should not be likely to be embroiled, and where, if our interests compelled us to interfere, we could do so with authority. Dr. Amos S. Hershey said:

As long as the leading states of Europe continue their present policy of aggression and colonization * * * the United States, for the sake of her own interests as well as for those of her weaker sister republics, must remain the principal bulwark against such spirit of aggression and policy of colonization.⁴⁴

Aside from considerations of our peace and safety, there are some critics of the Monroe Policy who assert that by prohibiting European

 $^{^{43}}$ See the Outlook, $79\!:\!366.$ See also Keasbey, The Nicaragua Canal and the Monroe Doctrine.

⁴⁴ Annals, 11:362. See also W. H. Taft, Independent, 76:530, and F. Garcia Calderon, Atlantic, 118:301.

domination in South and Central America, we are impeding the progress of civilization. Were these countries to be colonized and governed by nations of superior power and "superior" civilization, say these critics, South and Central America would be better governed, industrial and commercial progress would be accelerated, and civilization generally improved. Stripped of its gloss of "civilization" and the thin veneer of altruism, the argument is reduced to the contention that a strong Power by virtue of its strength, has the right to subjugate and control weaker Powers, acting as the judge of its own warrant in so doing. It is only the strong Power, superior or inferior in civilization as the case may be, that could force its particular brand of civilization upon other states. We have no warrant for believing that a Power which would be strong enough to subjugate a South American state would necessarily bring in its train a superior type of civilization. War as a civilizing medium, moreover, usually tears down more than it builds up.

Let us not be deceived by the assumption that the strong is necessarily the righteous. Let civilization pursue its stately course unimpeded by clanking sabres. The governments of South and Central America have the right to develop their own distinctive civilization. If their military power were great, we should hear no talk of conquering them for the purpose of forcing a "superior" civilization upon them. Their non-military character does not make their right to independence and freedom any the less valid.

The progress which the republics of the south have made during the last century has been made under the protecting wing of the United States. It has developed under the tacit assumption that continued protection was to be relied upon. These republics have a certain "vested right," as it were, to our continued protection until they are strong enough to fight their own battles. We should be shirking a plain duty were we now to abandon them at this stage of their development. So long as aggressive military Powers await only the opportunity to crush out the budding national civilizations of the south, we must continue to

⁴⁶ See Walter Wellman, No. Am. R., 173:838, and Sydney Brooks, Fortn., 76:102.

⁴⁶ Roosevelt, Message of 1901: "The peoples of the Americas can prosper best if left to work out their own salvation in their own way." Cited in Moore's Digest, sec. 594. See also the Outlook, 74:372, and Harp. W., 47:771.

defend them, not only for the sake of our own peace and safety, but in the performance of a sacred international obligation.⁴⁷

This is the traditional policy of the United States. Being traditional, in these times of rapid change it is suspected of being out of date, simply because it was articulated in a bygone age. The Monroe Policy is not out of date, however, because the considerations that have made it necessary in the past, while appearing to-day in somewhat different form, are no less pressing than in 1823. So long as these conditions continue to exist, the United States can never abandon the policy that the Latin American republics must be independent of European political control. To the superficial glance this may appear a war policy, but in reality it is a peace policy. If we must fight in its defense, it will be to prevent greater and more destructive wars. If attempts are made to violate the Monroe Policy, we must bend all our national energies to defeat them, content that in so doing we shall best serve the true interests of ourselves, of Latin America and of the world.

III. SHOULD THE ENFORCEMENT OF THE MONROE POLICY BE ABANDONED?

We have seen that the United States must continue to maintain the Monroe Policy, and to refuse to permit the slightest act that would lead to any violation of that policy by non-American nations. We shall now discuss the relations between the United States and the western republics, that are necessary in order that the policy should be a logical and consistent one. We must so act that the policy we pursue will be in accord with international law and international public morality. If, under any circumstances, European aggression would be justified as a means of enforcing international rights or generally accepted rules of international morality, we must adopt a policy that will prevent, as far as possible, those circumstances from arising.⁴⁸

There are three issues upon which European intervention in America

⁴⁷ See the Outlook, 72:871, 79:367 and 79:711.

⁴⁸ Cleveland, Message to Congress of Dec. 17, 1895: "* * when the United States is a suitor before the high tribunal that administers international law, the question to be determined is whether or not we present claims which the justice of that code of law can find to be right and valid." Moore's Digest, sec. 966.

Cf. note of Secretary Seward, June 2, 1866, cited in Moore's Digest, sec. 948.

might be undertaken and defended: (1) intervention by a European Power under the so-called "right of conquest;" (2) intervention by a European Power for the purpose of furthering in its own interests, rebellion against an American republic by provinces largely inhabited and controlled by former citizens of that Power; (3) intervention by a European Power for the purpose of collecting claims based upon private or public contract debts or upon torts committed upon its nationals.

To oppose intervention based upon the right of conquest would not be in conflict with the legal rights of any nation, for there is no legal right of conquest. International law neither denies nor affirms such a right.⁴⁹ To be valid in international law, a principle must be generally sanctioned, and the whole body of American republics has formally gone on record as repudiating the right of conquest. Since conquest pure and simple cannot be legally undertaken, the United States would be legally justified in opposing acts of intervention based upon the right of conquest, if her interests were involved.

Intervention for the purpose of assisting rebellion, under ordinary circumstances, is a flagrant violation of the rights of a nation.⁵⁰ The situation is not essentially different because the rebels are former citizens or subjects of the intervening Power. By settling in foreign territory and becoming the citizens of another state, they have waived all right to the protection or interference of their former government. By assenting, expressly or tacitly to their naturalization, the European Power has waived all political interest in or for the colonists. The issue, then, would be simply one of high-handed interference with the internal affairs of a friendly state, a flagrant breach of the legal rights of that state, and an act that the United States would be legally justified in intervening to oppose.⁵¹

The Monroe Policy, then, squares with the legal rights of other nations, so far as the first two grounds of intervention are concerned. We are legally correct in defending the Monroe Policy by opposing

⁴⁹ "Respecting this so-called right of conquest, it would seem that modern international law neither denies nor affirms." Hershey, p. 181, note 8.

⁵⁰ It is an interference with that nation's sovereignty, which is illegal, as already cited in Chapter I.

⁶¹ "Intervention may be said to be legally justifiable * * * to prevent or terminate an illegal intervention on the part of another State." Hershey, p. 150.

intervention undertaken on such grounds. We may also conclude that the intervention for the purpose of assisting rebellion against a friendly State would be as wrong morally as it would be improper legally. The so-called right of conquest, moreover, which has no legal existence, morally is but the assertion of the right of the strong as against the weak, and as such is indefensible. Unless conquest is undertaken as a punishment for corresponding violations of international right by the weaker Power, and unless such violations are sufficiently flagrant to forfeit legal rights and defy international morality and justice, we have a moral right, indeed in this hemisphere a moral obligation, to resist intervention for conquest. The disregard of international obligations, however, presents a new and more complex problem, and it is here that the necessity for prevention or enforcement appears.

. What are the acts of an American republic that would justify military intervention by a European Power? In the past they have assumed three forms: (1) denial of justice to foreign nationals within its territory in cases of torts committed upon them; (2) refusal of effective legal redress in its courts for the private contract claims of foreign nationals against its citizens; (3) non-payment of its public debts due to citizens or subjects of foreign Powers.⁵²

The Monroe Policy does not commit the United States to oppose military intervention by European Powers as a punishment for offenses of this character. We have repeatedly asserted that such conflicts do not concern the Monroe Policy at all, so`long as the intervention stays within certain limits. The Monroe Policy simply demands that such intervention shall not result in permanent occupation of territory or the establishment of European political control over the offending republic. In interventions of this sort foreign nations have taken pains to assure us that they were acting simply to punish the offending republic for certain definite acts, and that permanent occupation or political control was not contemplated.⁵³

What brings these interventions within the scope of the Monroe Policy is the danger that they will result in permanent occupation of territory

⁵² For discussion and citation of cases on Claims, see Moore's Digest, secs. 986 et sea.

⁵³ This is true without exception. See Moore's Digest, secs. 927-969.

or the establishment of political control by European nations.⁵⁴ The danger is increased by the possibility that in extreme cases, according to the accepted standards of international law and international ethics, permanent occupation might be justified and even necessary. For example, in a future case of intervention against a republic which may have been a constant source of trouble, an exasperated European Power might claim that the republic had forfeited its legal right to freedom from foreign control and interference, and its moral right to independent existence. Were there no Monroe Policy, the prevailing standards of international morality might not condemn that attitude. It would be clearly unjust to other nations to insist that a government which shows incapacity to maintain its obligations should continue its course unchecked.⁵⁵

If we continue to admit the right of European Powers to intervene to punish American republics for illegal or immoral acts, conditions may arise under which permanent occupation of territory or political control will be the only means of effective punishment.

The question is, therefore, whether the Monroe Policy should be "enforced"—whether we should so act as to prevent acts by American nations that would justify intervention resulting in political control. Certain doctrines have emanated from South America, where "enforcement" is naturally regarded with suspicion and distrust, advocating the extension of the rule of non-intervention to cases of claims. Dr. Calvo, the Argentinian publicist and diplomat, in his work on international law published in 1868, took the ground that neither diplomatic nor armed intervention should be recognized as legitimate methods for

⁵⁴ As in the case of France in Mexico 1863-65. Moore's Digest, sec. 957.

⁵⁵ Sovereignty is limited by: "The rules, principles and customs of international law. For a violation of those rules, which are binding upon all nations, a state is internationally responsible." Hershey, p. 100. Dr. Hershey says elsewhere that the right of sovereignty is relative, depending upon the circumstances. In the most severe cases it would seem that extinction of the sovereignty that fails to perform its international obligations is defensible.

Roosevelt, Message of 1904: "It is a mere truism to say that every nation, whether in America or elsewhere, that desires to maintain its freedom, its independence, must ultimately realize that the right of such independence cannot be separated from the responsibility of making good use of it." Moore's Digest, sec. 968. See Message of 1905, Moore's Digest, sec. 962.

collecting private claims based upon contract or torts. Under the name of the Calvo Doctrine, this idea has become very popular with certain South American republics, and it has long been urged that the United States should give its sanction to the principle and act in accordance with it. In 1902, when the allied fleets were blockading the ports of Venezuela to force the payment of the public obligations of that republic, Dr. Luis Drago, Minister of Foreign Affairs of Argentina, urged that the United States act with the Argentine Republic upon the basis that the principles of international law do not justify one nation in exacting by force of arms the payment by another nation of public debts due to citizens of the former. This has become known as the Drago Doctrine.

The advocates of these doctrines would solve the difficulty by denying the right of intervention for the collection of debts, public or private, or of damages for torts committed upon citizens of the intervening Power. If these doctrines were generally accepted as international law, certainly there would be no need for enforcement, and very little chance for justifiable intervention by any European Power. But the difficulty with our acting upon these principles is that they have not been so accepted. We should be guilty of "international impertinence" indeed, were we to take a position that departs so radically from the generally accepted rules governing intervention.

Neither is it sufficient to insist upon arbitration after the point has been reached at which intervention is legally justified. Arbitral boards, being human, are not a certain means of obtaining a just decision. Moreover, an arbitration by its very nature would be confined to an examination of the justice or injustice of the claims themselves, and a decision that they were just would not change the means of enforcing those claims and collecting the award. If the republics concerned were still unwilling or unable to pay the award, the result might be occupation

⁵⁶ See Calvo's work, Vol. 3, sec. 1280 et seq.

⁵⁷ Dec. 29, 1902. Text of the note is cited in Moore's Digest, sec. 967.

⁸⁸ See Hershey's Essentials and Moore's Digest as to justifiable grounds for intervention. The Porter Resolution (see *infra*, note 66) was not considered as an adoption of the ideas of these doctrines, inasmuch as the provisos reduced it simply to a rule requiring arbitration first. The Porter Resolution was unsatisfactory to Dr. Drago himself, and he opposed its ratification.

of customs-houses or even the occupation of territory to compel payment, just as if no arbitration had taken place.⁵⁹ In the last analysis, while arbitration is a fairly good means of settling the question of the justice of a dispute, it is in no sense a means of preventing such disputes, and we have seen that it is dangerous to us to permit conditions under which such disputes can arise.

We cannot escape the conclusion, therefore, that the only safe policy for the United States to pursue is not alone to assert the Monroe Policy, but to enforce it; not alone to resist European aggression, but whenever possible to eliminate the conditions that would invite European aggression and control. As President Roosevelt said in his message of 1905: "It is incompatible with international equity for the United States to refuse to allow other Powers to take the only means at their disposal of satisfying the claims of their creditors, and yet to refuse itself to take any such steps." ⁶⁰

The necessity of some form of prevention or enforcement was recognized by this government as early as 1850. In this year the United States joined with Great Britain and France to bring to an end a bloody strug-

⁵⁹ Roosevelt, Message of 1905: "As a method of solution of the complicated problem arbitration has become nugatory inasmuch as in the condition of its finances an award against the republic is worthless unless its payment is secured by the pledge of at least some portion of the customs revenues. This pledge is ineffectual without actual delivery over of the customs-houses * * * * * Moore's Digest, sec. 965.

Lord Salisbury, Note to the British Ambassador at Washington in 1895: "* * but it is not free from defects which often operate as a serious drawback on its value. It is not always easy to find an arbitrator who * * * is wholly free from bias, and the task of insuring compliance with the award is not exempt from difficulty." Moore's Digest, sec. 966.

⁵⁰ Cited in Moore's Digest, sec. 962. See also message of 1904: "In the western hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power." Moore's Digest, sec. 968.

Premier Balfour in a speech at Liverpool, Feb. 1903: "It would be a great gain to civilization if the United States were more actively to interest itself in making arrangements by which these constantly recurring difficulties between European Powers and certain states in South America could be avoided." Lord Salisbury in note already cited: "The United States have a right, like any other nation, to interfere in any controversy by which their own interests are affected, and they are the judge whether those interests are touched and in what measure they should be sustained." Moore's Digest, sec. 966.

gle between Hayti and San Domingo. In his instructions to Mr. Walsh, the American representative for the purpose, Secretary Webster gave as one of the reasons for the endeavor the fact that the French Government had claims against Hayti that could not be satisfied unless peace was restored. A desire was shown to prevent circumstances from arising under which an American state would be unable to pay its claims.⁶¹

President Buchanan in his message to Congress of 1860 advocated intervention by the United States against the Miramon Government in Mexico, in order to prevent a European intervention, which, it was feared, might endanger Mexican independence. Congress did not follow the President's suggestion, being so absorbed in more engrossing domestic problems that the interests of the United States abroad did not receive much consideration. The intervention of Great Britain, France and Spain actually occurred, and as had been feared, soon assumed a political form, in the setting up of the Mexican Empire under the protection of France.⁵²

In 1880–81, when Venezuela was threatened with a French intervention to force payment of overdue claims, Venezuela requested the United States to act as receiver of the Venezuelan customs, and the United States agreed. It was impossible for the United States to settle the question of the priority of the French claims over others, and the project was dropped. Conditions became steadily worse until the joint intervention of 1902.⁶³

The reason that enforcement was not adopted as the consistent policy of the government was probably the fact that, with the exception of the Mexican cases of 1859–65,64 in which the United States, by reason of an overwhelming military force, was able to maintain the Monroe Policy without enforcement, military interventions for the purpose of forcing payment of claims were infrequent and unimportant. With the growing importance of Latin America, the increasing intercourse between Latin America and other nations, and the growing territorial and colonizing ambitions of European Powers, however, it soon became important that

⁶¹ Moore's Digest, sec. 960.

⁶² Moore's Digest, sec. 956.

⁶³ Moore's Digest, secs. 967 and 995.

⁶⁴ Moore's Digest, sees. 955 and 956.

some measure of enforcement should be carried out. The emergence of the United States from her diplomatic isolation and her growing influence and importance as a world Power after the Spanish War of 1898 forced upon the United States the necessity for formulating a more consistent policy of enforcement.

President Roosevelt actively embarked upon such a policy, and the emphasis which he gave to enforcement has led French writers on the Monroe Policy to speak of enforcement as the Roosevelt Doctrine. The most striking example of enforcement during his administration was the Dominican protocol of 1905, in which, by arrangement with the Dominican Government, the United States undertook to collect and disburse to foreign creditors the customs receipts of the republic. In his message to Congress at the time President Roosevelt said: "This protocol affords a practical test of the efficiency of the United States Government in maintaining the Monroe Doctrine." ⁶⁵ The results have abundantly justified the action of the President. The arrangement has added to the stability of the Dominican Government, has greatly reduced internal disorder, and has put the finances on a firm basis.

Along with prevention, however, should go the demand for arbitration of the difficulties in accord with the Porter Resolution, if they occur in spite of the efforts of the United States to prevent them. Whatever the defects of arbitration may be, the United States would not be justified in allowing intervention by force to occur without insisting that the Porter Resolution should be followed. This is necessary, partly to eliminate fraudulent and unjust claims and partly to give time for the intervening Power to consider its action more calmly and for the republic involved to come to reasonable terms without being forced to do so. Prevention and arbitration, therefore, in the light of past history and future prob-

⁴⁵ See text of message and other data in Moore's Digest, sec. 962. The recent attitude of the United States toward Haiti is a case in point.

The Porter Resolution adopted by the Hague Conference of 1907 and ratified by most of the important Powers reads: "The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals. This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, renders a compromis impossible, or after the arbitration, fails to submit to the award." 2 H. C. (1907) Art. I.

abilities, are the conditions that will make the Monroe Policy square with the legal and moral rights of other nations, and in so doing will reduce the danger to Latin America and to the United States of any attempt to break it down.

It is impossible to lay down a general rule for the forms that enforcement should take. Our action in any particular case must be determined by our honor and interests in that case alone. It is certain, however, that the United States should set about the task in a spirit of fraternity and altruism, and that the interference with the governments of Latin America should be as slight as safety to ourselves and to them may permit. President Roosevelt's attitude was clearly expressed in a message to Congress when he said:

We would interfere with them only in the last resort and then only if it became evident that inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations.⁶⁷

It cannot be made too clear that enforcement is absolutely unnecessary in the case of such nations as Argentina, Brazil and Chile, which together make up two-thirds of the territory of South America. It is a commonplace to assert that these nations have passed out of the unstable, uncertain stage of national beginnings, and with their incomparable material resources and the statesmanlike qualities of their leaders, stand on a plane scarcely inferior to our own. Mr. Roosevelt recognizes this when he says:

The great and prosperous civilized commonwealths such as the Argentine, Brazil and Chile, in the southern half of South America, have advanced so far that they no longer stand in any position of tutelage toward the United States. They occupy toward us precisely the position that Canada occupies.⁶⁸

Enforcement has been rarely necessary and bids fair to become less so in the future in other states of South America south of the Caribbean. These states are making steady and definite progress toward political stability.

⁶⁷ Message of 1904. Moore's Digest, sec. 968.

Outlook, 105:747.

The countries bordering upon the Caribbean Sea and in the West Indies, however, present a difficult problem, and, unfortunately, at the same time, it is apparent that our immediate interests are more directly concerned in the Caribbean region than in the regions farther south. It is here that the state of the public debts occasions the most anxious concern on our part for their welfare. It is here that it is most frequently alleged that foreigners are mistreated and refused effective legal redress. It is here that a plausible case for foreign intervention resulting in political control could most easily be made. The necessity for a policy of enforcement is practically confined to the Caribbean region.

By carrying out a careful policy of enforcement, then, the United States is acting with a clear case in law and ethics in upholding the Monroe Policy upon every occasion. The United States assumes a more dignified attitude, and maintains her policy on a distinctly higher plane. The policy which the United States finds absolutely necessary for her peace and safety has become a policy not indeed international law, but a policy not repugnant to its principles, as it might be were no means of enforcement undertaken. If change is necessary in the enforcement of the Monroe Policy, it must be in the direction of more tactful or more vigorous methods of procedure. At all events, the Monroe Policy, enforcement and all, must be maintained.

There has been much agitation, particularly since the mediation of Argentina, Brazil and Chile in the Mexican difficulty, for a Pan-American Policy. Advocates of that policy desire that the republics of South and Central America, or at least the A B C Powers, should join with the United States on equal terms for the enforcement and maintenance of the Monroe Policy.⁷⁰ Although these proposals are usually nebulous and indefinite, within certain well-defined limits such a policy would be of distinct advantage. If the United States were to adopt the practice

⁶⁹ Dr. Hershey, in discussing the rule of non-intervention (p. 154), says that it is limited to nations possessing a certain degree of stability and order. "Whether such states as those of Central America, with all their boasted sovereignty, are capable of affording such a degree of order and protection, is, to say the least, very doubtful."

⁷⁰ This subject is very fully treated in the Annals for July, 1914. Mr. Taft approves the general principle. Independent, 76:542. See also the report of the Clark University Conference, summarized by President Blakeslee in No. Am. R., 198:779, and in the Outlook, 105:740.

of inviting the coöperation of Argentina, Brazil and Chile in cases of protest and intervention in Latin America, the moral effect would be excellent. Such a practice would allay the increasing suspicion and distrust with which acts of enforcement by the United States alone are regarded in Latin America. By including as enforcing Powers republics of kindred race, language and institutions, it would make protest more effective and intervention less necessary. It would help to produce a spirit of cordial Pan-Americanism that would not only benefit us politically but would increase the opportunities for our commerce. It would remove from the Monroe Policy any suspicion of territorial aggrandizement, and cause it to be regarded as what it is, simply a defensive policy in the interests both of Latin America and of the United States. The Monroe Policy would cease to be unilateral, and would acquire a continental importance and sanction. As Ex-Secretary Olney said in a recent address:

That an American concert of purely American states would * * * tend to prevent wars between states as well as insurrections and revolutions within states * * * and that the United States as a leading member of the concert might be counted upon as an agency for good even more potent than if acting in the invidious rôle of sole and supreme dictator, seem to be tolerably sure results.⁷¹

It must be emphasized, however, that the United States must never put herself in a position in which she will be unable to declare or enforce the Monroe Policy by herself, in case other American Powers should refuse to act with her in a case in which her interests are involved. Prof. Leo S. Rowe advocates a Pan-American enforcement, "provided, that in making it Pan-American, we do not relinquish the right to maintain it independent of the will of any one of the other Powers of the American continent." ⁷²

With this limitation, Pan-American enforcement would be an unqualified blessing, and present circumstances seem to point toward some form of it in the not far distant future. Pan-American enforcement will be the capstone to the edifice erected by the United States through long

⁷¹ Annals, 54:81. As to precedents for joint action, the United States and Mexico intervened jointly in Central America in 1907, and the United States, Argentina and Brazil mediated between Peru, Ecuador and Chile in 1911.

⁷² Proc. Am. Soc. Int. Law, 1914, p. 131.

years of patient labor. It will realize the ardent hopes and prophecies of Bolivar the Liberator when he said:

Would to God that some day we may be fortunate enough to establish an august congress of representatives of the republics, kingdoms and empires of America * * * An assembly of this kind may possibly be held at some future time * * * The will of God has not separated these nations without a purpose, by the immensity of two oceans from the rest of the world.

ROBERT D. ARMSTRONG.

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EDITORIAL COMMENT

THE RIGHT OF PRIZE AND NEUTRAL ATTITUDE TOWARD ADMISSION OF PRIZES

The presence in American jurisdiction of the *Appam*, an English vessel captured by a German cruiser, suggests some remarks upon the right to make prize, the method of determining the title thereto, and the practice of nations in allowing or prohibiting prizes, accompanied or unaccompanied by the capturing vessel, to enter and to remain in neutral ports.

In the first place, public armed vessels of the enemy upon the high seas are subject to capture, and title passes from government to government without the need of a decision of a prize court, unless the individual captors are by the law of their country entitled to a share in the spoils, called "prize money," in which case, the decision of a prize court is necessary to apportion the shares due to the captors.

In the next place, private property of the enemy upon the high seas is by the laws of war subject to capture, although there has been for more than a century past a determined effort made on the part of the United States to secure the immunity from capture of unoffending private property of the enemy upon the high seas. As, therefore, according to the practice of nations it is legal to capture private property of the enemy upon the high seas, it would seem that capture vests title in the captor and that judicial proceedings in such a case are only instituted by the government of the captor in order to determine whether the circumstances of the case justify capture, and if there be municipal statute or practice granting the individual captors a share of the prize money, to apportion the shares to which each person taking part in the capture is entitled.

An exception to the right of capturing enemy private property exists in the case of ships engaged on a scientific mission, employed for philanthropic and merciful purposes, as in the case of the Red Cross, and ships engaged in inshore fishing.

The presence of neutral interests in ships belonging to or sailing under the flag of the enemy, or the presence of neutral cargo upon enemy ships, which cargo is by the Declaration of Paris exempt from capture, renders it highly desirable that the validity of the capture of enemy merchant vessels be determined by a prize court, and in the interest of neutrals, rather than of belligerents, this has become the settled practice of nations.

Finally, a neutral ship may be engaged in what is called unneutral service; or it may be an ordinary merchant vessel carrying contraband. In certain cases of this kind, the vessel may be seized, passed upon by a prize court, and condemned. In this last case, however, the neutral clearly has a right to have the regularity of the capture passed upon in a judicial decision, because if force be a measure of title between belligerents, law determines the relations of belligerent and neutral.

A quotation from Hall's International Law will make this subject clear. Thus Mr. Hall says:

As the property in an enemy's vessel and cargo is vested in the state to which the captor belongs so soon as an effectual seizure has been made, they may in strictness be disposed of by him as the agent of his state in whatever manner he chooses. So long as they were clearly the property of the enemy at the time of capture, it is im-

material from the point of view of international law whether the captor sends them home for sale, or destroys them, or releases them upon ransom. But as the property of belligerents is often much mixed up with that of neutrals, it is the universal practice for the former to guard the interests of the latter, by requiring captors as a general rule to bring their prizes into port for adjudication by a tribunal competent to decide whether the captured vessel and its cargo are in fact wholly, or only in part, the property of the enemy. And though the right of a belligerent to the free disposal of enemy property taken by him is in no way touched by the existence of the practice, it is not usual to permit captors to destroy or ransom prizes, however undoubted may be their ownership, except when their retention is difficult or inconvenient. ¹

It has been thought advisable to quote these passages from Hall's treatise as the statements on these questions are confusing, and as statements of a conflicting nature are to be found in the reports.

Perhaps the clearest statement on the question of passing title is to be found in Commodore Stewart's Case (1 Ct. Claims, 113), decided by the Court of Claims in 1864, in which the court was very desirous to hold that title to the Levant passed to the individual captors upon its capture by the frigate Constitution, then under the command of Captain Stewart. Captain Stewart on the 20th day of February, 1815, sighted, chased, and captured the Cyane and Levant, two British men-of-war. Followed by a superior British squadron, he sought to carry his prizes to the United States, but the Levant, unable to keep up with the Constitution, took refuge in Portuguese waters, where, notwithstanding Portugal was neutral, the Levant was captured by the British squadron without an attempt on the part of Portugal to hinder such an unlawful act, or even a remonstrance, The loss of the prize rankled in the breast of Captain Stewart, and, insisting that the failure of the United States to secure satisfaction against Portugal for permitting this violation of its neutrality by virtue whereof Stewart lost the prize, he brought suit in the Court of Claims against the United States in order to recover damages for the failure of the United States to prosecute and to enforce its right against Portugal. In considering the effect of capture upon title to the captured vessel, Chief Justice Casey, speaking for the court, said:

Attention for a moment to the foundation and origin of the right of the individual to the captured property will assist us in the solution of this question. That right is acquired not in virtue of the seizure of it as enemies' property, but by grant of the sovereign whose commission the captor bears. Judge Story says: "It is now clear

¹ Hall, 6th ed., pp. 451-2.

that all captures in war inure to the sovereign, and can become private property only by his grant." (*The Emulous*, 1 Gall., 569; 11 East., 619.)

The right to all captures from the earliest times has vested primarily in the sovereign, and no individual can have any interest in a prize, whether made by a public or private armed vessel, except that which he received from the bounty of the State. (Law of Maritime Warfare, p. 374; Valin, Com. II, 235; Bynk., cap. 17; Sir L. Jenkins's Work, p. 714.) An interest in a prize can only be derived from the government. (Phillips on Insurance, 182, § 320; The Joseph, 1 Gall., 558; 11 East., 428.) It is even denied that the individual captors, prior to condemnation, have an insurable interest in the captured property. (Routh v. Thompson, 11 East., 432; Devause v. Steele, 6 Bingh. N. C., 370; Luccna v. Crawford, 3 B. & P., 75; 5 ibid., 323; Crawford v. Hunter, 8 T. Rep., 13.)

The principle applicable to this case to be extracted from the authorities cited is, that by the capture of this ship the property to it vested in the United States, and whatever right to or title in it the claimants acquired must be derived from their sovereign authority.²

Chief Justice Casey then went on to quote a portion of the opinion of Sir William Scott in the case of *The Elsebe* (5 C. Rob. 173), holding that capture vests property in the crown and that individual captors only obtain an interest by a local municipal statute or practice, and are vested with that interest by the decision of a prize court. The Chief Justice then said:

If these principles are sound, and we think they are sustained by the strongest reasons and the highest authorities, it must follow that this suit cannot be maintained by this claimant, for want of title to and interest in the subject-matter in respect of which the claim is made.

By the seizure of the ships they acquired a right to carry them into a port of this country for adjudication. It is the condemnation under the act which gives the interest, and not the seizure. The capture vests it in the United States—the condemnation in the captors.

Next, as to the attitude of neutral nations concerning the admission of enemy prizes to their ports. The capture of an enemy merchant ship by a belligerent man-of-war or privateer vests possession in the government of the captor because such vessels are authorized by their commissions to make captures. The prize is therefore public property in the possession of the capturing vessel, and if the man-of-war or privateer should enter a neutral port with its prize, it would be treated, if permitted to enter, as public property, and as such exempt from local jurisdiction, if admitted without condition, and as long as it was permitted to remain

² Stewart v. United States, 1 Ct. Claims Reps., 118.

and by so remaining to enjoy the hospitality of the port. The presence, however, of belligerent vessels is a menace to a neutral port, and international practice limits their stay and conduct during such stay. The presence of a public vessel with a prize does not lessen but rather increases the inconvenience. The presence of a privateer with a prize was still more objectionable because the officers of privateers were not subject to military discipline and control; and their misconduct was so great and dishonorable that privateering was abolished by the Declaration of Paris of 1856.

But there is an objection to the presence of a prize in a neutral port accompanied or unaccompanied by a vessel of war or a privateer. There is a danger that a capturing vessel sent into port with a prize crew may not be able to maintain order, and there is a tendency to have the prize unduly prolong its stay, and even have prize proceedings begun in the home country to condemn the prize and pass title to the captors while the captured vessel lies in a neutral port. This is very much like making a neutral port the basis of hostile operations, and in any event neutrals should not allow their ports to be a depository for the spoils of war. There has therefore been for generations a strong tendency to exclude prizes from neutral ports, even when accompanied by belligerent vessels of war or privateers. Thus, as far back as 1650, France issued the following declaration:

And in order to obviate frauds perpetrated for the purpose of concealing illegal prizes and piracies which ruin commerce, we forbid all governors of towns, places and eastles under our sway to allow any captains of vessels bearing a foreign commission who have made prizes to remain in their ports and roadsteads more than twenty-four hours, unless they have been forced to put into port and remain there by stress of weather; and, further, on condition that they do not sell or leave there any of the goods taken by them, in any way or manner whatsoever.²

An ordinance of 1681 followed, which has been pretty generally followed and which is said to be the origin of the twenty-four hour rule applied to the stay of public belligerent vessels in neutral ports. The text of this ordinance is as follows:

No vessels taken by captains bearing a foreign commission may remain more than twenty-four hours in our ports and harbors, unless they are kept there by stormy weather, or unless the prize is taken from our enemies.

- Ortolan, Règles internationales et diplomatie de la mer, V. 2, p. 304, note.
- ⁴ Pistoye & Duverdy, Traité des prises maritimes, Paris, 1855, V. 2, p. 449.

By the time of the Crimean War, the practice to exclude prizes was becoming very general, subject to exceptions of a humanitarian nature, as appears from the following passage, quoted from Pistoye and Duverdy's *Traité des prises maritimes* (1855), Volume 2, page 452:

On the occasion of the present war, the neutral powers with the exception of one, Austria, went further than the French ordinance. In effect, according to the terms of Article 14, every belligerent cruiser may at any time, and whatever may be the condition of the sea, bring prizes into French ports, on condition, however, of not remaining there more than twenty-four hours. Now, most of the neutral powers have declared this year that they will not admit belligerent privateers in their ports except in case of absolute necessity; whence it follows that privateers may not bring their prizes into the ports of these powers, even if they remain only twenty-four hours (see ordinance of the Senate of Hamburg, April 26, 1854; idem, Lubeck, Art. 3; idem, Bremen, April 28-29, 1854, Art. 2; ordinance of the Government of Oldenburg, April 20, 1854, in fine; declaration of the King of Sweden, April 8, Art. 9; declaration of the King of Denmark, April 20, Art. 4; ordinance of the Duke of Mecklenberg, April 26, Art. 1; law of May 5, 1854, of Hanover, Art. 2; decree of the King of Two Sicilies of May 17; ordinance of the Grand Duke of Tuscany, June 3, Art. 2; notice of the Belgian Government, April 25, 1854; decision of the King of the Sandwich Islands, July 17, 1854). As for the Emperor of Austria, he has declared, in his ordinance of May 23, 1854, that prizes made by belligerents would not be admitted to the ports of the empire, except the port of Trieste. Article 7 allows the unloading of foreign prizes in this port and even their sale.

It will be of interest briefly to state the attitude of European nations toward the admission of prizes during the Civil War, the last great maritime war to which the United States was a party.

Great Britain announced on June 1, 1861, that it intended to forbid "the armed ships, and also the privateers, of both parties, from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's Colonies or possessions abroad." Later, on June 2, 1864, the following additional instructions were issued:

- 1. If any prize captured by a ship of war of either of the belligerent Powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given by the governor to the captors immediately to depart and remove such prize.
- 2. A vessel which shall have been actually and bond fide converted into, and used as, a public vessel of war, shall not be deemed to be a prize within the meaning of these rules.
 - 3. If any prize shall be brought within Her Majesty's jurisdiction, through mere
- *Bernard, A Historical Account of the Neutrality of Great Britain during the American Civil War (1870), pp. 136-137.

stress of weather, or other extreme and unavoidable necessity, the governor may allow for her removal such time as he may consider to be necessary.

- 4. If any prize shall not be removed at the time prescribed to the captors by the governor, the governor may detain such prize until Her Majesty's pleasure shall be made known.
- 5. If any prize shall have been captured by any violation of the territory or territorial waters of Her Majesty, the governor may detain such prize until Her Majesty's pleasure shall be made known.

FRANCE

Declaration of Emperor Napoleon III, of June 10, 1861.

- 1. No vessel of war or privateer of either of the belligerents will be permitted to bring prizes into our ports or roadsteads and to remain there more than twenty-four hours, except in case they have been forced to put into port.
 - No captured articles can be sold in our said ports or roadsteads.

BELGIUM

Belgium has given its adhesion to the principles laid down in the Declaration of the Congress of Paris of April 6, 1856. This adhesion was published, together with the said Declaration (6th June, 1856) in the Belgian *Moniteur* of June 8, 1856.

The commercial public is notified that instructions on this subject have been given to the judicial, maritime, and military authorities, warning them that privateers, under whatever flag or commission, or letters of marque, are not to be allowed to enter our ports except in case of imminent perils of the sea. The aforesaid authorities are charged, consequently, to keep a strict watch upon all such privateers and their prizes, and to compel them to put to sea again as soon as practicable.

NETHERLANDS

In obedience to the King's orders, the Ministers for Foreign Affairs, of Justice, and of the Marine, present to the knowledge of all whom it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or seaports, unless in case of distress, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.⁹

SPAIN

Article 3. It is forbidden to vessels of war or privateers with their prizes, to enter or to remain for more than 24 hours in the ports of the monarchy, except in case of

- ⁶ Bernard, A Historical Account of the Neutrality of Great Britain during the American Civil War (1870), pp. 140-141.
 - ⁷ *Ibid.*, p. 144.
 - ⁸ Ibid., p. 145.
 - º Ibid., p. 146.

stress of weather. Whenever this last shall occur, the authorities will keep watch over the vessel, and oblige her to go out to sea as soon as possible without permitting her to take any stores except those strictly necessary for the moment, but in no case arms nor supplies for war.

Article 4. Articles proceeding from prizes shall not be sold in the ports of the monarchy.¹⁰

PORTUGAL

Article 1. In all the ports and waters of this kingdom, as well on the continent and in the adjacent islands as in the ultramarine provinces, Portuguese subjects and foreigners are prohibited from fitting out vessels destined for privateering.

Article 2. In the same ports and waters referred to in the preceding article is, in like manner, prohibited the entrance of privateers and of the prizes made by privateers, or by armed vessels.

The cases of overruling necessity (force majeure), in which, according to the law of nations, hospitality is indispensable, are excepted from this regulation, without permission, however, being allowed, in any manner, for the sale of any objects proceeding from prizes.¹¹

From the actions of European nations in the Crimean War and in the Civil War, it seems to be clear that the attitude of neutral nations is against the admission of prizes, except for humanitarian reasons. Further proof is furnished by Convention No. 13 of the Second Hague Peace Conference of 1907 concerning the rights and duties of neutral Powers in naval war. The subject of the admission of prizes is stated and regulated in the following three articles:

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew. (Article 21.)

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21. (Article 22.)

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty. (Article 23.)

This convention is not cited as binding, because by Article 28 thereof, "its provisions do not apply except between contracting Powers, and

¹⁰ Bernard, A Historical Account of the Neutrality of Great Britain during the American Civil War (1870), p. 147.

11 Ibid., p. 148.

then only if all the belligerents are parties to the convention." Inasmuch, however, as neutrals are admitted to have the right to exclude prizes, or to admit them on conditions, it is evident that any neutral can enforce Articles 21, 22, and 23 if it should so desire, irrespective of the question whether the convention is or is not legally binding. It should be said, as explaining the attitude of the United States in this matter, that in adhering to the convention, the United States specifically excluded Article 23.

James Brown Scott.

DAYS OF GRACE FOR MERCHANT VESSELS OF THE ENEMY

A degree of consideration for merchant vessels of one belligerent within the ports of the other belligerent has often been shown since the seventeenth century. Such consideration was particularly common after the middle of the nineteenth century, though no clear principle could be said to be established. The practice of granting days of grace showed wide differences in the period granted, varying from six weeks to a few hours. At the Conference at The Hague in 1907 the delegates of the United States took the position that days of grace for departure of merchant vessels of one belligerent in the port of the other belligerent at the outbreak of war should be regarded as obligatory. The British delegation were opposed to making the grant of a period for departure obligatory, though supporting the idea that it would be desirable as a favor. The result of the consideration at The Hague in 1907 was the formulation of a convention less stringent in its provisions than recognized by the United States delegation as then legally binding under international practice.

The objection brought forward against an obligatory period was that a fixed number of days would be undesirable, as the period should be determined in each case as it arose. This objection seemed sound, but in no way insurmountable. The Convention of 1907 relative to the Status of Enemy Merchant Vessels announces in the preamble that the states of the world are anxious in negotiating the convention "to insure the security of international commerce against the surprises of war" and to protect commercial operations "in process of being carried out before the outbreak of hostilities." As commercial relations involve mutual exchange, the difficulty which many felt lest one state should gain an advantage over another at the outbreak of war would seem to be met by the insertion of a reciprocal obligation to grant days of grace

accompanied by the proviso that one belligerent should be obliged to grant no longer period than that granted by his opponent. Such a plan is both reasonable and practicable.

It is reasonable that one belligerent should not be under obligation to accord to his opponent more favorable treatment than that accorded to him by his opponent. It is practicable because the belligerent granting a given period to his opponent may under the reciprocity principle shorten the period to that accorded by his opponent.

Further to support this position may be adduced the practice of the present war in Europe. The German declaration of war against France of August 3, 1914, contained a provision for reciprocity in regard to treatment of merchant vessels, which France immediately met. The British Orders in Council of August 4, 1914, contained a similar plan for German vessels, but this was not carried into effect rather because of misunderstanding of telegrams, than because of lack of willingness on the part of Great Britain and Germany. The principle of days of grace was adopted as regards Austria-Hungary when Great Britain was informed that Austria-Hungary would treat British ships in a manner "not less favorable" than that proposed by Great Britain for Austro-Hungarian vessels. France likewise accorded reciprocal treatment to Austro-Hungarian merchant vessels.

It would seem proper that the United States should continue to support as reasonable and practicable a plan to which in actual test of war the great states have resorted, and that the principle of reciprocity in the grant of days of grace for innocent merchant vessels of one belligerent in the ports of the other at the outbreak of war should prevail.

GEORGE GRAFTON WILSON.

ARMED MERCHANT SHIPS

The question has been much discussed whether merchant ships of the enemy carrying arms for defensive purposes are to be considered as losing their mercantile character by this fact and are to be denied the privileges accorded by international law to enemy merchant vessels. The question has also been discussed since the outbreak of the great war whether the Declaration of Paris of 1856 forbidding privateering should in spirit, if not in the letter, prevent enemy merchant vessels from carrying arms, even for defensive purposes. The question has also arisen and has been the subject of diplomatic negotiations, with resultant tension,

whether neutrals can properly ship their goods upon such armed merchant vessels without properly subjecting them to the fate of the vessel carrying them; and, finally, whether neutral persons traveling upon such vessels are to be held as voluntarily subjecting themselves to the risk incurred by such vessels and, by assuming the risk, depriving themselves of the claim to protection of their governments, or, indeed, whether their governments have the right under such circumstances to protect their subjects or citizens in the premises.

It will clear the field of discussion, at least so far as the United States is concerned, to state that this government is not a party to the Declaration of Paris, that it is therefore not bound by its provisions, and that the United States is free to recognize the right to indulge in privateering should it desire to do so.

In the next place, it should be said, at least according to the practice of the United States, that an American citizen can not renounce the right of the government to protect him in an appropriate case, of which the government is the judge, because a citizen of the United States as such does not represent the United States, and a renunciation of a right can only be made by an official agent of the government acting within the scope of his agency. A familiar illustration from municipal law will make this distinction clear: A person injured by a tort may, if he choose, waive the civil injury; but if the tort be at one and the same time a crime, the injured person can not waive this, because he is not the agent of the public, and the appropriate agent of the public must determine whether or not prosecution shall take place.

With these two questions out of the way, the others may be taken up and considered.

It may be admitted that it is difficult to determine whether a gun is carried for a defensive or for an offensive purpose, but the circumstances of the individual case may be appealed to, as the armament required for one purpose differs from that necessary for the other. The view has been expressed that the duty of a merchant ship is not to resist if attacked, and that by defending itself it loses the character of a merchant ship and becomes a privateer, in the sense that it carries on hostile operations without becoming a public vessel: and as privateering is forbidden by the Declaration of Paris, which binds the contracting parties, the vessel in question has no legitimate standing in international law. It is not a private vessel converted to a public purpose, commissioned by the government and manned by officers of the navy; and, on the other

hand, it is not a merchant vessel plying its peaceful calling without taking part in hostilities. On September 19, 1914, the Department of State issued a circular which recognized that, "A merchant vessel of belligerent nationality may carry an armament and ammunition for the sole purpose of defense without acquiring the character of a ship of war," and prescribed certain rules for determining the offensive or defensive character of the armament in each case.

The Department of State has the authority of Chief Justice Marshall in the case of *The Nereide* (9 Cranch, p. 388), decided by the Supreme Court of the United States in 1815, to the effect that a neutral may lawfully employ an armed belligerent vessel to transport his goods, and such goods do not lose their neutral character, by the armament, nor by the resistance made by such vessel, provided the neutral do not aid in such armament or resistance. The same question arose later and the judgment of the court in the case of *The Nereide* was affirmed in the case of *The Atalanta* (3 Wheaton, p. 409), decided in 1818.

It should be said that Mr. Justice Story delivered a vigorous dissenting opinion in the case of *The Nereide*, but, apparently regarding the question as settled by the holding in that case, he did not dissent in the case of *The Atalanta*.

It should also be said that, while there do not appear to be many adjudged cases, the practice of Great Britain, as stated by Sir William Scott in the case of *The Fanny* (1 Dodson, p. 443), decided in 1814, is opposed to *The Nereide* and accords with the dissenting opinion of Justice Story in that case. The distinction between *The Nereide* and *The Fanny*, and the questions involved in these decisions is thus pointed out by Chancellor Kent, in his Commentaries:

In the case of *The Nereide*, the Supreme Court of the United States carried the principle of immunity of neutral property on board an enemy's vessel to the extent of allowing it to be laden on board an armed belligerent cruiser; and it was held that the goods did not lose their neutral character, not even in consequence of resistance made by the armed vessel, provided the neutral did not aid in such armament or resistance, notwithstanding he had chartered the whole vessel, and was on board at the time of the resistance. The act of arming was the act of the belligerent party, and the neutral goods did not contribute to the armament, further than the freight, which would be paid if the vessel was unarmed, and neither the goods nor the neutral owner were chargeable for the hostile acts of the belligerent vessel, if the neutral took no part in the resistance. A contemporary decision of an opposite character,

¹ The text of the circular is printed in the Special Supplement to the Journal for July, 1915, p. 234.

on the same point, was made by the English High Court of Admiralty in the case of the Fanny; and it was there observed that a neutral subject was at liberty to put his goods on board the merchant vessel of a belligerent; but if he placed them on board an armed belligerent ship, he showed an intention to resist visitation and search, by means of the association, and, so far as he does this, he was presumed to adhere to the enemy, and to withdraw himself from his protection of neutrality. If a neutral chooses to take the protection of a hostile force, instead of his own neutral character, he must take (it was observed) the inconvenience with the convenience, and his property would, upon just and sound principles, be liable to condemnation along with the belligerent vessel.

The question decided in the case of the *Nereide* is a very important one in prize law, and of infinite importance in its practical results; and it is to be regretted that the decisions of two courts of the highest character, on such a point, should have been in direct contradiction to each other. The same point afterwards arose, and was again argued, and the former decision repeated in the case of the *Atalanta*. It was observed, in this latter case, that the rule with us was correct in principle, and the most liberal and honorable to the jurisprudence of this country. The question may, therefore, be considered here as at rest, and as having received the most authoritative decision that can be rendered by any judicial tribunal on this side of the Atlantic. (12th ed., Vol. 1, pp. 132–3.)

As far as the United States is concerned, the *Nereide* is the measured judgment of the Supreme Court, not overruled or departed from, but solemnly affirmed on a reconsideration of the question involved. The law seems to be clear, as far as the Supreme Court of the United States can make or expound the law.

JAMES BROWN SCOTT.

THE CONSEQUENCES OF THE SEVERANCE OF DIPLOMATIC RELATIONS

There seems to be some confusion in the public mind as to the consequences of a break in the diplomatic relations between two states.

When a certain diplomatic agent is unacceptable for a personal reason, his recall may be asked or he may even be sent out of a country, but the presumption is that a successor will be appointed. Suppose this not to take place, it is still no proof of strained relations, because the individual and not the state sending him is at fault.

It is quite otherwise when state A commits an unfriendly act which state B desires to resent. Their diplomatic relations may cease, e. g., through B's recall of its agent to A, not because the agent conducting them is persona non grata, but because governmental intercourse implies an amicable understanding which no longer exists. The recall of a minister is a mark of displeasure aimed at the state. But even so,

and even if reciprocated, it is not the beginning of hostilities necessarily, not even the equivalent of a non-intercourse act or reprisals. Treaties between A and B are operative, commerce is unchecked, communication other than diplomatic unhindered. There is a background of what is conveniently called "strained relations," which may doubtless grow into hostilities but which equally well may melt away in the warmth of returning good-will or be allayed by reparation. The stoppage of direct diplomatic intercourse may last for a considerable time with no hostile sequel, as in the case of Great Britain and Venezuela with their boundary dispute, for ten years.

So likewise Italy recalled her minister at Washington in 1891 to mark her displeasure at the slowness of redress for the New Orleans lynching. And, breaking relations at its own end, France refused to receive Pinckney in 1796, to show its resentment at Jay's Treaty. Similar pressure was put by the United States upon France in 1834 to enforce the Spoliation Claims, and upon Mexico in 1858 to prevent discrimination against our citizens. None of these instances resulted in actual war.

T. S. Woolsey.

THE SEIZURE OF ENEMY SUBJECTS UPON NEUTRAL VESSELS UPON THE HIGH SEAS

In the *Journal Officiel* of the French Republic for November 3, 1914, there appears the following brief but very important paragraph:

By reason of measures taken by the German military authorities in Belgium, and especially in France, regarding persons susceptible of being called to the colors, and whom the said authorities have taken as prisoners of war or have held for further action, the Government of the Republic has given instructions that all enemy subjects of the same category as the above and found on board neutral vessels shall be made prisoners of war.

There are several points of view from which this paragraph of a single sentence should be considered. In the first place, German subjects susceptible of military duty are not to be taken from German control, which would be proper enough to do if the French Republic were able to capture them and to remove them from German jurisdiction; the German subjects belonging to this category are those found, not in German territory or in territory subject to German control, nor upon German vessels upon the high seas, from which they could properly be taken, but upon neutral vessels, and such persons are to be made prisoners of war. That is to say, the French authorities are to visit

and search neutral vessels upon the high seas, not neutral vessels which have subjected themselves to French jurisdiction by entering a French port, and the German subjects not actually incorporated in the army, but capable of being so incorporated, are to be removed from the neutral vessels upon the high seas and made prisoners of war.

Now, the reason for this is, not that neutrals have committed any crime for which they are to be punished, but the reason, or pretext, is that German authorities in Belgium and in France have made prisoners of war, or have otherwise held French citizens and Belgian subjects fit for military service. This action of the German authorities is regarded as wrong, and neutral vessels carrying German subjects of the class specified are to suffer for alleged misconduct of German authorities in Belgium and in France.

Retaliation is at best an ugly word, and leads easily to reprehensible acts which people regret and would rather have undone when it is too late. But retaliation upon the enemy which affects only, or principally, neutrals who have committed no wrong is indefensible, and the nation doing so makes the justification of its course very difficult and alienates the sympathy of the neutrals of which the belligerents of to-day stand so sorely in need.

JAMES BROWN SCOTT.

SOME POPULAR MISCONCEPTIONS OF NEUTRALITY

There seems to be considerable popular misconception of the rights and obligations involved in a proper idea of neutrality.

In the first place, it should be observed that the popular idea of neutrality seems to differ widely from its juristic conception or content. In the eyes of the international jurist neutrality is a status or condition, and consists in the observance of the *law of neutrality*. This law consists of certain fairly well-defined rules and regulations which are, historically speaking, for the most part the results of precedents and of a series of compromises between the opposing interests of neutrals and belligerents.

Neutrality has been well defined as "the condition of those states which in time of war take no part in the contest, but continue pacific intercourse with the belligerents." States choosing a neutral status during war enjoy certain legal rights, such as the inviolability from belligerent activities of their own territory and the free use of the high seas,

the common highway of nations. This latter right is, however, subject to the exercise of the belligerent rights of visit and search and, under certain circumstances, of capture or even of destruction of neutral vessels and cargoes.

The rules of neutral obligation prescribe total abstention from certain acts (such as the sale of warships or the fitting and sending out of military expeditions); the observance of a formal impartiality in cases where indirect aid is permissible (as in that of the sale of munitions and war supplies); and the toleration by neutrals of the exercise of certain belligerent rights (such as those of visit, search, and capture).

The popular idea of neutrality seems to be much broader and far more comprehensive than the legal conception thereof. The popular idea seems to imply an attitude of assumed indifference or impartiality, of isolation or aloofness, involving a total abstention from acts which might possibly be of material assistance to either side. Or, if such indirect aid be permitted, this conception of neutral obligations would require that the impossible attempt be made of holding even the balance of indirect assistance between the opposing belligerents. Some would even go so far as to demand a sort of spiritual, moral, or intellectual neutrality involving (as such an attitude would) a suspension of judgment, a suppression of emotional life, and a negation in practice of our fundamental conceptions of justice and righteousness.

It is not always remembered that the status or condition of neutrality is not itself a legal duty. No state is under legal or moral obligation to be or remain neutral. Whether, for example, the United States shall continue to act the part of a neutral or belligerent in this war is a question of national policy which, like any other political question, should be decided from the standpoint of what we deem to be our own essential and permanent interests coupled with those of humanity at large.

It is of particular interest to note that the idea of juristic neutrality is comparatively recent. The theory of neutral rights and obligations was first formulated by the great publicists of the eighteenth century like Bynkershæk, Hubner, and Vattel; but was first put into real practice by the United States during Washington's administration. The so-called "founder" or "father" of international law, Grotius, was not an advocate of neutrality. In a single passage—almost his sole reference to the subject—he thus summarizes his position:

It is the duty of neutrals to do nothing which may strengthen the side which has the worse cause, or which may impede the motions of him who is carrying on a just war; and in a doubtful case, to act alike to both sides, in permitting transit, in supplying provisions, in not helping persons besieged.

So recent and great an authority as Westlake practically indorses this view. He says:

The general duty of every member of society is to promote justice within it, and peace only on the footing of justice, such being the peace which alone is of much value or likely to be durable. Thus in a state the man would be a bad citizen who allowed a crime to be committed before his eyes without doing his best to prevent it, or who refused to assist the magistrates in punishing crime; and in the society of states the action of all the members in upholding its laws is the more required since an organized government is wanting. . . . We may sum up by saying that neutrality is not morally justifiable unless intervention in the war is unlikely to promote justice, or could do so only at a ruinous cost to the neutral.²

Most publicists agree that the conception of "benevolent" neutrality is foreign to international law. This is entirely true from a purely juristic standpoint, for a state which was "benevolently" neutral in the observance of its neutral duties toward a belligerent would not be observing a real neutrality.

Yet benevolent neutrality may be an actual political fact. The neutrality of Germany toward Russia was confessedly "friendly" during the Russo-Japanese War.³ The German Government failed to prevent (if, it did not, indeed, encourage) the sale to Russia of a number of transatlantic steamers belonging potentially to its auxiliary navy, and it appears to have permitted the exportation overland of torpedo boats to Russian territory.

As stated above, a state desiring to remain neutral is certainly bound to discharge its neutral obligations. But it is not legally bound to insist upon the observance of its neutral rights except in so far as these involve a performance of neutral duties. There is here a large sphere within which neutral statesmen may act at their discretion and be

¹ Jure Belli ac Pacis, lib. III, cap. 17.

² Int. Law, II, pp. 160-61. Westlake cites with apparent approval the views of Lorimer as set forth in his Institute of the Law of Nations, II, Bk. IV, ch. 19. Lorimer considers neutrality or non-participation in belligerency justifiable only in the following cases:

⁽¹⁾ involuntary ignorance of the merits of the quarrel; and (2) impotence or physical inability to participate in the war.

³ Von Bülow, Imperial Germany, p. 81. Von Bülow claims that without "failing in strictly proper neutrality," the neutrality of Germany with respect to Russia was "even a shade more kindly than that of France."

properly influenced by motives of national policy or considerations of humanity or justice.

Thus, in this war we could not permit our territory to be used as a base of direct political or military activity in the interest of any belligerent, for that would involve a breach of neutral obligation as well as a violation of sovereign rights. Nor would motives of national honor and self-respect allow us to permit the massacre of those of our nationals who are non-combatants while on board common carriers on the high seas or to accept a mere money indemnity as compensation for the loss of our murdered dead.

But when we come to consider the questions involved in Great Britain's straining of the law of contraband, blockade, and continuous voyage, the case stands far otherwise. Mere property rights on however large a scale are here involved, and the case is not complicated by considerations of national honor or a violation of sovereign rights.

Questions relating to our rights as traders or property owners should be decided primarily from the standpoint of the national interest. In their decision we must, however, consider not merely the temporary or even the material interests involved, but problems of present and future policy. Of these the main problem relates to our future relations with that Power, which it is almost certain will remain the "Mistress of the Seas" for many years to come and with whom we have enjoyed close cultural and social relations for several centuries.

Amos S. Hershey.

THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

The Journal has devoted several editorial comments to the American Institute of International Law, stating the reasons which suggested its foundation, the progress made towards its permanent organization, and the services which it is expected to, and believed by its partisans that it can, render to the development of international law in the Western Hemisphere. Without seeking to cover this ground again, it is proper to state that, with the approval and co-operation of a publicist in each of the twenty-one American Republics, such progress was made that on October 12, 1912, the Institute was declared founded. It was the hope, however, of its founders that it might have in the near future a formal

¹ See comments in the Journal for October, 1912, p. 949; January, 1913, p. 163; and October, 1915, p. 923.

meeting at which the necessary measures could be taken to complete its organization, to draft the program of its future activities, and to enable it to take its place among the scientific societies of the Americas. The American Institute is not the creation of a few enthusiasts to be imposed upon the publicists of America. It rests upon a national society established in the capital of every American Republic. On the 25th day of December, 1915, the last of the national societies to be formed in the twenty-one American Republics was founded, and on December 29, 1915, the American Institute was formally opened in connection with and under the auspices of the Second Pan American Scientific Congress. It was welcomed by the Honorable Robert Lansing, Secretary of State of the United States, and a member thereof, on the part of the Government of the United States; it was formally welcomed by His Excellency Eduardo Suárez-Mujica, Ambassador of Chile and the President of the Congress, a member thereof, on the part of the Congress; and it was formally welcomed by the Honorable Elihu Root, a member thereof and its honorary president, on behalf of the American publicists. After its opening session, it completed its organization by electing the five members recommended by each of the twenty-one national societies, and it adopted its constitution and the by-laws.

It is worth while to consider for a moment the relation between the national societies and the Institute, because when that is understood, it will be seen that the Institute, instead of being created from above and superimposed upon the publicists of different countries, in reality is nothing more nor less than a scientific body composed of a committee of five members of each national society and is in this sense their representative. This is clearly stated in the third article of the constitution, which reads as follows:

The American Institute of International Law is composed of committees or delegations of national societies of international law, established in the different American Republics and which it receives as affiliated with it, and of which national societies it is the perpetual representative.

The relation again is indicated in Article 4, devoted to national societies, which says that

The affiliated national societies propose the members to be elected by the Institute. The members of the national societies forming part of the Institute constitute in their country a committee of direction of the said society. This committee forms the international bond of union between the national society and the Institute.

The committee communicates either directly or indirectly by means of the Sec-

retary General of the national society with the Secretary General of the Institute, sending him the reports of the said national society, or indicating the progress of the work undertaken by the national society.

The Secretary General of the Institute communicates the said reports to the different national societies.

From this it is apparent that the American Institute is the agent of the different national societies in which each national society is represented by five of its members recommended by the society itself, and that these five members regard themselves as a bond of union between the Institute, on the one hand, of which they are members, and the national society on the other hand, of which they are likewise members. The Institute is thus composed of five members from each national society, making 105 in all. The governing board consists of the officers and two members, forming the Council of Direction, which is thus composed:

Honorary President, Elihu Root.

President, James Brown Scott.

Secretary General, Alejandro Alvarez, Chile.

Treasurer, Luis Anderson, Costa Rica.

Elected Members, Antonio Bustamante, Cuba; Joaquin de Casasus, Mexico.

The members are for the most part former ministers of foreign affairs, diplomats, members of the Permanent Court of Arbitration, delegates to the Hague Peace Conferences, professors of international law, judges, and publicists.

Many projects were presented at the recent meeting by the members, and they will be assigned for study and report by different committees, and in many instances they will be considered by the national societies. It is interesting in this connection to note that Honorable Robert Lansing, Secretary of State, requested the Institute, composed exclusively of publicists from neutral nations, to take up, consider and report upon the question of neutrality, as appears from the following memorandum, which, in virtue of its importance, is given in full:

MEMORANDUM

January 3, 1916.

At the first meeting of the Institute I had the honor to direct attention to the imperfect code of rules which define and govern the relations between belligerents and neutrals. These rules, which have grown up during the past one hundred and twenty-five years and have been in some cases differently interpreted by courts of different

countries, have been frequently found inadequate to meet new conditions of warfare, and as a result every war has changed, modified or added to the rules, generally through the process of judicial decisions. The prize courts of belligerents have thus become the interpreters of belligerent rights and neutral obligations, and their interpretations evidence an unconscious prejudice arising from over-appreciation of the needs of the belligerent. Writers on international law have relied upon these prize court decisions in dealing with the subject of neutrality so that they have laid down rules formulated indirectly from a belligerent's point of view. In addition to these influences affecting a code to govern the conduct and treatment of neutrals, international conferences and congresses have generally confided the drafting of rules relating to belligerent and neutral rights to military and naval experts who naturally approach the subject from the belligerent's standpoint. Thus, judicial decisions, text writers, and international agreements have given all the advantage to the belligerent and have shown little regard for the rights of neutrals.

It would appear that it is time to reverse this process of treatment of the subject of neutrality and to deal with it from the point of view of the neutral.

I would, therefore, suggest that a committee be appointed to study the problem of neutral rights and neutral duties seeking to formulate in terms the principle underlying the relations of belligerency to neutrality rather than the express rules governing the conduct of a nation at war to a nation at peace.

I would further suggest that the subject might be advantageously divided into two parts, namely, the rights of neutrals on the high seas, and the duties of neutrals dependent upon territorial jurisdiction.

In view of the past year and a half of war the present time seems particularly opportune to study this question and this Institute being composed of members from neutral nations is especially fitted to do this from the proper point of view and with the definite purpose of protecting the liberty of neutrals from unjustifiable restrictions on the high seas and from the imposition of needless burdens in preserving their neutrality on land.

ROBERT LANSING.

The Institute accepted the proposal of Mr. Lansing, and will consider and report at a later date upon the subject.

It adopted a statement, to be known as its declaration of the rights and duties of nations, for the guidance of its members in stating the point of view from which it approaches questions, and the principles which will guide its conduct. The declaration adopted January 6, 1916, follows:

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS ADOPTED BY THE AMERI-CAN INSTITUTE OF INTERNATIONAL LAW AT ITS FIRST SESSION IN THE CITY OF WASHINGTON, JANUARY 6, 1916

WHEREAS the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal

equality, the right to property, and the right to the enjoyment of the aforesaid rights;

WHEREAS these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

WHEREAS, according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

WHEREAS the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

WHEREAS we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the states forming the Society of Nations; and

WHEREAS these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

WHEREAS the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations;

THEREFORE, THE AMERICAN INSTITUTE OF INTERNATIONAL LAW, at its first session, held in the City of Washington, in the United States of America, on the sixth day of January, 1916, adopts the following six articles, together with the commentary thereon, to be known as its Declaration of the Rights and Duties of Nations:

- I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.
- II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.
- III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers

of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

- IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.
- V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.
- VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

The declaration is accompanied by the official commentaries adopted at one and the same time, stating the sense in which each right and each duty is to be understood, based upon decisions of the Supreme Court of the United States and upon statements of Latin-American publicists. It is too long to be printed in this place, and too important to be summarized.

During the meeting an invitation was officially presented by the Government of Cuba, inviting the American Institute to hold its next session in the City of Havana as the guest of the Cuban Government. This invitation was accepted, and the date provisionally agreed upon for the second session was the middle of January, 1917.

The American Institute of International Law has barely begun its labors and, without predicting either their nature or their value, it is perhaps sufficient to say that such men as Dr. Ruy Barbosa, of Brazil, Dr. Luis Drago, of Argentina, Dr. Joaquin Casasus, of Mexico, and Hon. Elihu Root, of the United States, would not consent to be members of an organization, lending their names and pledging themselves to unlimited co-operation, if they do not believe that it is calculated to succeed and to render services to the cause of international law, which will justify its creation.

James Brown Scott.

A RECENT DEPLOYMENT OF THE LATIN AMERICAS IN SUPPORT OF A DIP-LOMATIC AND HUMANITARIAN POLICY INITIATED BY THE AMERICAN GOVERNMENT

Those of us who were interested listeners to the clear exposition of the final resolutions of the Second Pan American Scientific Congress were somewhat disappointed that reference was not made in the Resolutions

to the promptness and loyalty of the Latin Americas in their help to the American Government to secure the ratifications and effectuation of the International Opium Convention signed at The Hague, January 23, 1912.

The just mentioned convention, as the readers of the JOURNAL know, is perhaps one of the most far-reaching commercial and diplomatic documents subscribed to at The Hague in recent years by the nations of the world. The convention embodies principles of international law and diplomacy which are bound to have an uplifting effect on mankind and to permanently influence all future international conferences held at The Hague or at any of the other great centers of thought and action.

It does not seem to be generally known, yet as a matter of fact, the International Opium Convention, together with its Protocols, was effectuated at The Hague, February 12, 1915.

This effectuation was accomplished in the midst of war and, as the American Minister to The Hague remarked, in substance, we put this convention into effect as between the United States, China and the Netherlands in spite of war, to show the world at large that instruments negotiated at The Hague are not mere scraps of paper.

In the International Conference of 1911–2 when the International Opium Convention was formulated by twelve of the leading Powers of the world, plans came to light which it was evident were designed to wreck the well-matured objective of the American Government, whose only aim was to clear the diplomatic slate as between China and the Treaty Powers, and to bring to an end a social and economic evil which for over one hundred years had been a hindrance to normal intercourse between Americans, Europeans and the Chinese and other Far Eastern peoples.

The convention just referred to was signed at The Hague on January 23, 1912. Before its final formulation and signature two attempts were made to nullify it.

There was first, a general suspicion on the part of the delegations of the negotiating Powers of the ability of the American Government to carry out its part of the convention. This suspicion was well based, for at the time there was no Federal statute in force corresponding in any way to the statutes which all of the other governments had on their books which conformed more or less to the terms of the convention.

Then again, there was an attempt to derelict the convention as a whole by requiring before its ratification and effectuation, signatures

to it, and agreements to ratify it, by certain of the European Powers, and the signatures and ratifications of all of the Latin Americas. There were certain of the diplomats at the conference who labored under the erroneous impression that there was so much friction between the United States and the Latin Americas that the former could not secure the adhesion of the latter to the convention.

On the first point there were certain questions put to the American delegation, which, while interesting, were not quite customary in a full powered conference. The questions were as follows:

What guarantee can they (the American delegation), give to the other delegations that the United States Government, after having signed and ratified the treaty (i. e., the convention under consideration), will pass the necessary legislation to put the stipulations of the treaty into force?

What guarantee can the American delegation give that the stipulations of the convention, after having been put into force, will not be invalidated by subsequent laws not in harmony with the convention?

Rather awkward questions and bluntly put to the American delegation by Herr Delbrück, of the German delegation, by order of his government.

After propounding these questions, Herr Delbrück stated: "It is of great importance to the German delegation to have an answer to these questions from the American delegation and to have inserted in the minutes the questions and their answers." (See page 105, Summary of Minutes of the International Opium Conference.)

These questions had to be answered, although as said before, they were unusual. Therefore the leader of the American delegation, knowing what the Congress and Executive had in mind, contented himself with assuring the leader of the German delegation that the good faith of the United States was a sufficient guarantee that the Congress would pass the necessary legislation to enforce the convention if Germany would sign and ratify it.

Ratification of the convention has been made by the United States, and the Congress has passed five acts which more than carry out the terms of the convention, and so fully answer the questions put by the German delegation.

It should be noted that to date Germany has not ratified the convention or promised to ratify it; while some forty other nations have done so.

But the main point: What of the action of the Latin Americas on a question which only remotely concerned them?

The Conference of 1911-2 insisted that the International Opium Convention should be signed and ratified by the Latin Americas. Otherwise the convention was a dead letter to Europe. Article 22 of the convention exhibits this. It devolved upon the American Government to secure favorable action from the Latin Americas.

After the adjournment of The Hague Conference, the United States presented the whole proceedings of the Shanghai Commission of 1909 and The Hague Conference of 1911–2 to the Latin American Governments with a request that, for the benefit of humanity at large, for the sake of international comity and the success of Hague Conferences, the Latin Americas promptly agree to Article 22 of the International Opium Convention. This was done in a circular instruction dated April 15, 1912.

That instruction was to the effect that during some thirty years a powerful and extensive public opinion had arisen in the United States and in several of the larger European countries which aimed to secure the abolition of the opium traffic as seen in Far Eastern countries and in the United States. This public opinion had been brought to the attention of Secretary Hay and President Roosevelt, and to the high officials of those other countries having intimate commercial intercourse with China. The particular feature of the instruction was an appeal to the Latin Americas to accept the terms of the International Opium Convention and so assure the world at large that they were as ever in close sympathy with any unselfish movement inaugurated by the United States.

By October, 1912, without a word of dissent or of suggestion of change in the terms of the International Opium Convention, all of the Latin Americas, except Peru, had agreed to the convention. They so informed the United States and The Netherlands.

Peru, with large economic interests at stake, had perforce to thoroughly examine the convention. For by a favorable assent to the instrument it stood to lose a couple of millions of revenue per annum. Yet His Excellency, M. Pezet, Peruvian Minister at Washington, was fully alive to the necessity of a solid backing of all of the Latin Americas to the convention. In every way possible he placed all facts before his government and it will be shown in a final paragraph that his highminded action was successful.

The Second International Opium Conference met at The Hague, July 1, 1913. All of the Latin Americas were represented, except Peru.

It was largely owing to the Latin American representation that some thirty nations agreed to ratify the convention of 1911–2 and to pass the necessary legislation to enforce it. It was seen by the European diplomats that there were no serious difficulties between the United States and the sister republics of the American continent, and that Article 22 of the convention had simply proved that on large diplomatic, economic and humanitarian questions the twenty-one republics would stand shoulder to shoulder.

Yet, during the nine days of the Second Conference the American delegates were frequently reminded that the United States and the Netherlands acting together had not been able to persuade Peru to accept the convention of 1911–2, with a large financial loss to herself. But Minister Pezet was watching the action of the Second Conference.

The delegates of some thirty Powers representing Europe, America and Asia had no sooner affixed their signatures to a protocol which ratified the International Opium Convention and provided for its general effectuation, than came a cablegram to the Minister for Foreign Affairs of the Netherlands notifying him that the Peruvian Government had instructed its minister plenipotentiary to sign the convention and agree to its ratification.

This action of Peru was noble; especially in view of the fact that as a Treaty Power with China, neglect on her part would have meant irreparable damage to the large plan of the United States, and evil consequences to China in her great effort to shake herself loose from the opium traffic.

Thus when the Second International Opium Conference adjourned at The Hague on July 9, 1913, every Latin American state had favorably answered the call of the American Government of April 15, 1912. Europe saw that the Americas were as one on any sane issue designed to be accomplished at The Hague.

The recent Second Pan American Scientific Congress stamps this great fact beyond dispute. He who runs may read.

HAMILTON WRIGHT.

THE SECOND PAN-AMERICAN SCIENTIFIC CONGRESS

This Congress met at Washington December 27, 1915, and adjourned on January 8, 1916, after what has been universally considered a remarkably successful meeting. The programs of the Subsections on In-

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ternational Law, Public Law, and Jurisprudence, printed in the JOURNAL for October, 1915, pages 916, 921 and 922 were carried out in general, with the modifications that always have to be made in a congress of a non-political kind, and even in political congresses. It is stated on high authority that there are two things you can always expect from them. One is that it will do something, and the other that it will not carry out its program. It is not necessary to restate the programs, which were only slightly modified, or to dwell upon the nature, scope or value of the proceedings, because the Final Act of the congress will shortly be published, with an official report in the nature of an interpretative commentary.

The complete list of recommendations of the congress are unfortunately both too numerous and too lengthy to be reproduced here, but it is proper briefly to refer to the recommendations on the subject of international law.

In the first place, it should be said that the articles of the Final Act dealing with international law are based upon the recommendations of the Conference of American Teachers of International Law, held at Washington, April 23–25, 1914, upon the invitation of the American Society of International Law at its eighth annual meeting. The recommendations of the Teachers' Conference were submitted to and approved by the Executive Council of the Society, which in turn transmitted the recommendations involving the expenditure of money to the Division of International Law of the Carnegie Endowment for International Peace, with the recommendation that steps be taken to carry them into effect. The Executive Committee of the Endowment approved the recommendations referred to, expressed its willingness to co-operate with the American Society of International Law in rendering them effective, and the Trustees of the Endowment have approved this action of their committee.

The recommendations thus vouched for and now approved by a scientific congress of the Americas and signed by the official delegates of twenty-one nations authorized to sign the Final Act thereof, have more than a passing interest since they make an international as distinguished from a national appeal, and are therefore worthy of very great consideration.

Briefly summarized, the recommendations are:

The preparation and publication of a bibliography of international law and related subjects, and of a carefully prepared index-digest of

Printed in the Proceedings of the Society for 1914, p. 315.

the heads and subheads on international law, with references thereto; the collection and publication, in cheap and convenient form, of official documents, both foreign and domestic, bearing upon international law; the publication of an international law reporter of judgments of national courts involving questions of international law, the sentences of arbitral tribunals, and the awards of mixed commissions. This recommendation was intended to supply the public with material both interesting and indispensable to the study of international law. Another recommendation aims to increase the courses and the time devoted to international law in American institutions of learning. Another article concerns the teaching of international law, and recommends that emphasis be laid upon the positive nature of the subject and the definiteness of the rules; that international law be not made the occasion of a universal peace propaganda; that concrete cases be considered; that accepted rules of international law be distinguished from questions of international policy; and that the experience of no one country be allowed to assume undue importance; that the higher students of American institutions of learning be encouraged to continue their studies in different countries, preferably in the Academy of International Law at The Hague when that institution is started; that international law be treated on a plane of equality with other subjects in the curricula of colleges and universities; and that professorships or departments devoted to its study be established where they do not exist; that law schools be earnestly requested to include international law in their courses of study; that in institutions where instruction in international law is lacking, steps be taken to secure the presence of visiting professors, who should be invited to give courses, not isolated lectures on matters of passing interest; that specialized courses be established in institutions in preparation for the diplomatic and consular services; that the study of international law be required in specialized courses in preparation for business; that in studying and teaching international law in American institutions, special stress be laid upon problems affecting the American public, and upon doctrines of American origin; and, finally, the congress extended to the American Institute of International Law "a cordial welcome into the circle of scientific organizations of Pan America, and records a sincere wish for a successful career, and the achievement of the highest aims of its important labors." The recommendations will, it is to be hoped, not fall upon deaf ears, for, as Mr. Root has so often pointed out, democracy has come to its own; and, if it is to exercise a high and fruitful influence in international relations, the people must be impressed with a sense of their duties as well as with a knowledge of their rights.

James Brown Scott.

THE ANNUAL MEETING OF THE SOCIETY

Pursuant to the arrangements previously announced,¹ the ninth annual meeting of the Society was held in Washington, December 28–30, 1915, in connection with the meeting of the Subsection on International Law of the Second Pan American Scientific Congress.

The meeting was opened on Thursday evening by the Honorable Elihu Root, President of the Society, who delivered his presidential address before an audience that taxed the capacity of the large meeting place. The subject of his address was "The Outlook for International Law" in which, while recognizing the difficulties under which international law now labors, he asserted that its development into a more definite body of rules with less uncertain means for insuring their enforcement will be a necessary prerequisite to the re-establishment and maintenance of the normal relations of intercourse between nations, and he indicated in a general way the steps which must be taken in order to place the science upon a firmer and more practicable basis. This address made a fitting keynote for the remarks which followed throughout the remainder of the meeting.

The opening session being a joint meeting with the Subsection on International Law of the Congress, Mr. Root was followed by two speakers on the program of the Subsection, namely, the Honorable John Bassett Moore and Professor George Grafton Wilson, who delivered scholarly papers upon "The Relation of International Law to National Law in American countries." The session ended with a suggestive discourse by Professor Norman Dwight Harris of Northwestern University, who spoke for the Society upon "The Duties and Obligations of Neutral Governments, parties to the Hague Conventions, in case of actual or threatened violations by Belligerents of the stipulations of the said Conventions."

The second session, held on Wednesday morning, was likewise a joint meeting between the Society and the Subsection on International Law.

¹ See the Journal for October, 1915, p. 915.

² Reprinted in this Journal, p. 1.

On this occasion Professor Theodore S. Woolsey and Mr. Edward A. Harriman appeared upon the Society's program. The former made a valuable contribution to the subject of "Retaliation and Punishment in International Law," and the latter discussed "The means to be provided and procedure adopted for authoritatively determining whether the Hague Conventions or other general international agreements, or the rules of international law, have been violated? In case of violation, what should be the nature of the remedy and how should it be enforced?" For the Subsection on International Law, Messrs. Jackson H. Ralston and Walter S. Penfield gave interesting historical presentations of "The Attitude of American Countries toward International Arbitration and the Peaceful Settlement of International Disputes."

The third session was held on Wednesday night, the Society meeting jointly with the American Political Science Association and the American Society for Judicial Settlement of International Disputes. Professor Jesse S. Reeves, of the University of Michigan, representing the Political Science Association, made a careful analysis of international disputes, pointing out the fundamental difference between those of a justiciable nature and those of a non-justiciable nature. The nature and form of the agreement for the submission of justiciable disputes to an international court were carefully treated by Dr. James Brown Scott, speaking for the Judicial Settlement Society, and the session closed with a well considered address by Professor A. de Lapradelle, of the University of Paris, who covered the following topic on the program of the Society: "Is a uniform law of neutrality for all nations desirable or practicable? If so, what are the principles upon which such a law should be based, and what generally should be its provisions?"

The fourth session, held Thursday morning, was devoted to a consideration of the following subject upon the program of the Society: "What modifications, if any, should be made in the law and practice as now applied by the principal maritime nations concerning the following subjects of international naval law in order, under the conditions of the modern interdependence of nations, adequately to safeguard the interests of both neutrals and belligerents?" Blockade and continuous voyage were taken up and considered by President Harry Pratt Judson, of the University of Chicago, and Contraband and Visit and Search by Professor George C. Butte, of the University of Texas.

The concluding session took place on Thursday afternoon, this being a joint meeting of the Society with the Subsection on International Law and the newly formed American Institute of International Law. The Honorable Elihu Root, representing the Society, Dr. Victor Maurtua, of the University of San Marcos, Lima, Peru, representing the American Institute of International Law, and the Honorable Simeon E. Baldwin and Mr. Arthur K. Kuhn, speaking on behalf of the Subsection on International Law, discussed the advisability and practicability of the codification of international law and the agencies by which it should be undertaken. In the course of his remarks upon this subject, Mr. Root took occasion to allude to the necessity for an agreement upon clear and definite rules of conduct to control the great nations in their dealings with the small and weak. Turning to the Latin American delegates, he said:

It is now nearly ten years ago since your people, gentlemen, and the other peoples of South America, were good enough to give serious and respectful consideration to a message that it was my fortune to take from this great and powerful Republic of North America to the other American nations. I wish to say to you, gentlemen, and to all my Latin American friends here in this congress, that everything that I said in behalf of the Government of the United States at Rio de Janeiro in 1906 3 is as true now as it was true then. There has been no departure from the standard of feeling and of policy which was declared then in behalf of the American people. On the contrary, there is throughout the people of this country a fuller realization of the duty and the morality and the high policy of that standard. Of course, in every country there are individuals who depart from the general opinion and general conviction both in their views and in their conduct; but the great, the overwhelming body of the American people love liberty, not in the restricted sense of desiring it for themselves alone, but in the broader sense of desiring it for all mankind. The great body of the people of these United States love justice, not merely as they demand it for themselves, but in being willing to render it to others. We believe in the independence and the dignity of nations, and while we are great, we estimate our greatness as one of the least of our possessions, and we hold the smallest state, be it upon an island in the Caribbean or anywhere in Central or South America, as our equal in dignity, in the right to respect and in the right to the treatment of an equal. We believe that nobility of spirit, that high ideals, that capacity for sacrifice are nobler than material wealth. We know that these can be found in the little state as well as in the big one. In our respect for you who are small, and for you who are great, there can be no element of condescension or patronage, for that would do violence to our own conception of the dignity of independent sovereignty. We desire no benefits which are not the benefits rendered by honorable equals to each other. We seek no control that we are unwilling to concede to others, and so long as the spirit of American freedom shall continue, it will range us side by side with you, great and small, in the maintenance of the rights of nations, the rights which exist

³ Pertinent extracts from Mr. Root's address at Rio de Janeiro in 1906, are printed in an editorial comment in the JOURNAL for April, 1909, Vol. III, p. 424.

as against us and as against all the rest of the world. With that spirit we hail your presence here to cooperate with those of us who are interested in international law; we hail the formation of the new American Institute of International Law, and the personal friendships that are being formed day by day between the men of the North and the men of the South, all to the end that we may unite in such clear and definite declaration of the principles of right conduct among nations, and in such steadfast and honorable support of those principles as shall command the respect of mankind and insure their enforcement.

At the business meeting of the Society, and at the meeting of the Executive Council, held on Thursday morning and afternoon, the officers and committees, who, owing to the postponement of the meeting from April to December, have been holding over since the 1914 meeting, were re-elected, and the Honorable Robert Lansing, Secretary of State, and the Honorable Robert Bacon were added to the list of Vice-Presidents. Professor Amos S. Hershey was elected to serve in the Executive Council until 1917 to fill the vacancy caused by the death of General George B. Davis, and Professor Charles Cheney Hyde was elected a member of the Council to serve until 1916 to fill the vacancy caused by the election of the Honorable Robert Lansing as a Vice-President.

In order to avoid any misunderstanding due to the holding of the ninth annual meeting in December, the Executive Council directed that the tenth annual meeting of the Society should be held at the usual time in 1916, namely, during the last week of April.

The meeting was brought to a brilliant close on Thursday night by a banquet at the Shoreham Hotel, given by the Division of International Law of the Carnegie Endowment for International Peace to the members of the American Society of International Law, the American Political Science Association, the American Society for Judicial Settlement of International Disputes, and the delegates in attendance upon Section Six of the Second Pan American Scientific Congress. Mr. Root presided as Toastmaster, the Secretary of State was the guest of honor, and addresses were made by Dr. Ernesto Quesada, President of the Delegation of Argentina to the Second Pan American Scientific Congress, Dr. V. K. Wellington Koo, Minister of China to the United States, and the Honorable Charles H. Sherrill, formerly American Minister to the Argentine Republic.

From the point of view of the numbers and character of the audience, the ninth annual meeting was undoubtedly the most successful meeting in the history of the Society. The importance of the occasion seemed to be an incentive to the speakers to give to their subjects the most careful study and to their utterances mature and deliberate consideration. The proceedings were consequently marked for their exceptionally high quality and impressiveness. The only regret is that the limitations of time did not permit the inclusion of all of the sessions of the Subsection on International Law within the time set apart for the Society's meeting so that the discussions in them might be included in the proceedings of the Society.

GEORGE A. FINCH.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: Ann. sc. pol., Annales des sciences politiques, Paris; Vie Int., La Vie Internationale, Brussels; Arch. dipl., Archives Diplomatiques, Paris; B., boletin, bulletin, bolletino; P. A. U., bulletin of the Pan-American Union, Washington; Clunet, J. de Dr. Int. Privé, Paris; Doc. dipl., France, Documents diplomatiques; B. Rel. Ext., Boletin de Relaciones Exteriores; Dr., droit, diritto, derecho; D. O., Diario Oficial; For. rel., Foreign Relations of the United States; Ga., gazette, gaceta, gazzetta; Cd., Great Britain, Parliamentary Papers; Int., international, internacional, internazionale; J., journal; J. O., Journal Official, Paris; L'Int. Sc., L'Internationalism Scientifique, The Hague; Mém. dipl., Memorial diplomatique, Paris; Monit., Moniteur belge, Brussels; Martens, Nouveau recueil générale de traités, Leipzig; Q. dip., Questions diplomatiques et coloniales; R., review, revista, revue, rivista; Reichs G., Reichs-Gesetzblatt, Berlin; Staats., Staatsblad, Netherlands; State Papers, British and Foreign State Papers, London; Stat. at L., United States Statutes at Large; Times, The Times (London).

August, 1914.

- 4 European War. The United States issued neutrality proclamations in the war between Austria-Hungary and Serbia, Germany and Russia, Germany and France. *Proclamation No. 1271*. Text in Special Supplement to Journal, July, 1915.
- 5 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between Great Britain and Germany. *Proclamation No. 1272*. Text in Special Supplement to Journal, July, 1915.
- 5 European War. France suspended German capitulations in Morocco. R. gén. de dr. int. public, 22: Doc. 65.
- 7 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between Austria-Hungary and Russia. Proclamation No. 1273. Text in Special Supplement to Journal, July, 1915.
- 8 EUROPEAN WAR. Switzerland issued a neutrality proclamation. J. O., Aug. 10, 1914.
- 10 European War. Montenegro. Austria-Hungary issued official notice of blockade of Montenegrin coast. J. O., August 12, 1914. 138

August, 1914.

- 13 European War. France suspended Austrian capitulations in Morocco. R. gén. de dr. int. public, 22: Doc. 74.
- 13 EUROPEAN WAR. The United States issued a neutrality proclamation in war between Great Britain and Austria-Hungary. Proclamation No. 1274. Text in Special Supplement to Journal, July, 1915.
- 14 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between France and Austria-Hungary. Proclamation No. 1275. Text in Special Supplement to Journal, July, 1915.
- 17 EUROPEAN WAR. Germany issued protest against the alleged atrocities of the Russian army. R. gén. de dr. int. public, 22: Doc. 74.
- 17 European War. France addressed to the signatory Powers of the Hague conventions a protest against the violations of international law by Germany. R. gén. de dr. int. public, 22: Doc. 75.
- 18 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between Belgium and Germany. Proclamation No. 1276. Text in Special Supplement to Journal, July, 1915.
- 18 European War. France issued protest against the use of dum dum bullets by Germany. R. gén. de dr. int. public, 22: Doc. 75.
- 20 European War. France addressed to the signatory Powers of the Hague conventions a protest against the bombardment of Pont-a-Moussin by the Germans. R. gén. de dr. int. public, 22: Doc. 76.
- 22 EUROPEAN WAR. Great Britain gave notice that Germany had mined the North Sea. R. gén. de dr. int. public, 22: Doc. 77.
- 24 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between Japan and Germany. Proclamation No. 1277. Text in Special Supplement to Journal, July, 1915.
- 27 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between Japan and Austria. *Proclamation No. 1278*. Text in Special Supplement to this Journal, July, 1915.

This proclamation was based upon a telegram from the Ambassador of Austria-Hungary to the effect that the Austrian cruiser *Queen Elizabeth* had been ordered to take up fight with the German navy in the Far East and that diplomatic relations with Japan had been broken off.

September, 1914.

- 1 European War. The United States issued a neutrality proclamation in the war between Belgium and Austria-Hungary. *Proclamation No. 1280*. Text in Special Supplement to Journal, July, 1915.
- 9 France—Peru. Agreement signed providing for the postponement of the date fixed in the protocol, signed February 2, 1914, for the settlement of outstanding claims. J. O., Sept. 27, 1914.
- 10 France—Turkey. Agreement signed postponing for six months the sessions of the mixed commission appointed under Article 4 of the compromis of December 18, 1913, for the settlement of claims. French text: J. O., Sept. 28, 1914.

October, 1914.

- 3 European War. France. Additional list of contraband issued. J. O., Oct. 3, 1914.
- 7 European War. Austria-Hungary reported to have mined the Adriatic. R. gén. de dr. int. public, 22: Doc. 85.
- 7 EUROPEAN WAR. FRANCE. Notice given that France had mined Austro-Hungarian waters in conformity with the Hague Convention VIII. J. O., Oct. 7, 1914.
- 14 France—Guatemala. French decree putting into effect the convention signed February 28, 1914, for the reciprocal protection of patents and trade-marks, ratifications of which were exchanged June 28, 1914. French text: J. O., Nov. 1, 1914.

November, 1914.

- 3 European War. France. France issued orders that all enemy subjects capable of being called to the colors found on board neutral vessels would be considered prisoners of war. It is stated that these orders are in reprisal for the German measures in Belgium and France by which all individuals capable of being called to the colors are considered prisoners of war. J. O., Nov. 3, 1914.
- 6 European War. The United States issued a neutrality proclamation in the war between Great Britain and Turkey. Proclamation No. 1286. Text in Special Supplement to Journal, July, 1915.
- 6 European War. France. Decree abrogating the decree of Au-

November, 1914.

- gust 25, 1914, adopting the Declaration of London during the present war. J. O., Nov. 7, 1914.
- 8 European War. Russia. Notice of the establishment of Russian prize courts at Cronstadt, Sebastopol and Vladivostok. J. O., Nov. 8, 1914.
- 15, 16. Great Britain—Switzerland. By an exchange of notes it was agreed that the arbitration convention of Nov. 16, 1904, and November 19, 1909, should remain in force until the exchange of ratification of the convention concluded June 10, 1914. R. gén. de dr. int. public, 22:428.
- 18 European War. China. Blockade of Tsing-Tao raised. J. O., Nov. 18, 1914.
- 26 European War. Russia gave notice of the mining of the Black Sea. J. O., Jan. 15, 1915.

January, 1915.

3 European War. France. Additional list of contraband issued. J. O., Jan. 2-3, 1915.

March, 1915.

- 1 EUROPEAN WAR. FRANCE. Announcement that France would seize all goods destined for Germany in retaliation for the German Admiralty order declaring a blockade of all English waters. J. O., March 16, 1915.
- 5 European War. Russia. Accession of Russia to the convention of November 9, 1914, between the United Kingdom and France relative to prizes captured during the war. G. B. Treaty Series, No. 4, 1915; J. O., April 2, 1915.
- 10 France—Russia. Commission appointed to study ways and means for developing trade with Russia. J. O., March 14, 1915.
- 13 Belgium—France. Convention signed suspending during the war the convention of July 30, 1891, relating to the nationality of minors. French text: J. O., March 23, 1915.
- 25 GREAT BRITAIN—NETHERLANDS. Convention renewing for a further period of five years the arbitration convention of February 15, 1905. English and Dutch texts: G. B. Treaty Series, No. 5, 1915.
- 25 United States—Russia. Treaty for the advancement of peace,

March, 1915.

signed Oct. 1-Sept. 18, 1914, proclaimed. English and French texts: U. S. Treaty Series, No. 616.

April, 1915.

- 2 France—Venezuela. French decree putting into execution the protocol of January 14, 1915, regarding French claims against Venezuela. French text of protocol: J. O., April 7, 1915. On Dec. 15 the following were appointed to serve under the protocol: President of the Commission: Andre Weiss. Members: Henri Berget, Maurice Roman, M. Grilhot and Jacques Arnavon. J. O., 1915: 9032.
- 20 European War. Notification of the blockade of the Kameroons, German West Africa. J. O., April 23, 1915.
- 23 France—Switzerland. French decree putting into execution the customs convention signed July 11, 1914. J. O., April 26, 1915.
- 24 France—Italy. French decree putting into effect a convention signed Dec. 17, 1914, regarding the use of the Roya River, ratifications of which were exchanged March 8, 1915. French text: J. O., April 29, 1915.
- 25 ITALY—SWITZERLAND. Treaty of arbitration signed renewing treaty which expired November, 1914. La paix par le droit, 18:292.

May, 1915.

- 13 France—Morocco. French decree promulgating the convention signed October 1, 1913, relating to an office for posts, telegraphs, and telephones. J. O., May 15, 1915.
- 22 Germany—Netherlands. Proclamation of Germany of treaty signed May 30, 1914, revising the treaty of Aug. 27, 1907, relating to workmen's compensation, ratifications of which were exchanged May 12, 1915. French and Dutch texts: Reichs-G., No. 69, 1915.
- 24 European War. The United States issued a neutrality proclamation in the war between Italy and Austria-Hungary. Proclamation No. 1294. Text in Special Supplement to Journal, July, 1915.
- 25 European War. France. Decree relating to Austrian and German patents. J. O., May 25, 1915.
- 26 European War. Italy declared a blockade of the coasts of Austria and Albania. J. O., June 3, 1915.

May, 1915.

29 European War. France issued additional lists of absolute and conditional contraband of war. J. O., May 29, 1915.

June, 1915.

- 2 European War. France and Great Britain declared a blockade of the coast of Asia Minor. J. O., June 6, 1915.
- 21 Great Britain—Honduras. Ratifications exchanged of a treaty of commerce and friendship signed May 5, 1910. English and Spanish texts: G. B. Treaty Series, No. 7, 1915.

July, 1915.

- 3 Great Britain—Russia. Agreement for the reciprocal waiver of consular fees on certificates of origin relating to exports. G. B. Treaty Series, No. 8, 1915.
- 12 Great Britain—Switzerland. Convention additional to the treaty of friendship and commerce of Sept. 6, 1855, signed March 30, 1914. English and French texts: G. B. Treaty Series, No. 6, 1915.

August, 1915.

- 6 European War. Great Britain—United States. Note verbale from the British embassy explaining the note of July 1, regarding the seizure of the Neches. Text issued by the Department of State.
- 13 EUROPEAN WAR. GREAT BRITIAN—UNITED STATES. Note from Great Britain in answer to the American note of June 3, 1915, regarding the query of the United States as to the extent of British exports to neutral countries. Text issued by the Department of State: N. Y. Times, Oct. 2, 1915.
- 23 EUROPEAN WAR. The United States issued a neutrality proclamation in the war between Italy and Turkey. Text issued by the Department of State. Proclamation No. 1308.

September, 1915.

7 European War. Germany—United States. German note to the United States regarding the *Arabic*. Indemnity refused, but offer made to submit the case to the Hague tribunal. *Text issued by the Department of State: N. Y. Times*, Oct. 6, 1915.

September, 1915.

- 9 Germany—Paraguay. Ratification by Germany of the extradition convention signed November 9, 1909, Paraguay having ratified the treaty August 14, 1914. German and Spanish texts: *Reichs-G.*, No. 123, 1915.
- 22 France—Great Britain. Agreement concerning the exchange of money-orders between British and French possessions and protectorates in West Africa. English and French texts: G. B. Treaty Series, No. 11, 1915.
- 23 UNITED STATES—RUSSIA. Protocol of agreement signed concerning the exportation of embargoed goods from Russia to the United States. U. S. Treaty Series, No. 618.
- 28 Great Britain—Netherlands. Agreement relating to the boundary between the State of North Borneo and the Netherland possessions in Borneo. English and Dutch texts: G. B. Treaty Series, No. 12, 1915.

October, 1915.

- 3 European War. Balkans. French troops were landed at Salonika, Greece, for passage to Serbia, under protest of the Greek Government. N. Y. Times, Oct. 6. For text of notes exchanged between the Allies and Greece see N. Y. Times, Oct. 7; and for Germany's protest see N. Y. Times, Oct. 7 and Oct. 14, 1915.
- 3 European War. Bulgaria—Russia. Russia issued an ultimatum to Bulgaria giving her twenty-four hours to break with Germany and Austria. Text: N. Y. Times, Oct. 4, 1915.
- 4 European War. Belgium. Belgium presented a note to the United States dealing with the allegation that Germany had forced Belgian workmen to labor for the Germans. N. Y. Times, Oct. 4, 1915.
- 5 EUROPEAN WAR. BULGARIA—RUSSIA. Bulgaria replied to the Russian ultimatum. The reply being unsatisfactory the French, Serbian, British and Italian and Russian ministers to Sofia asked for their passports. N. Y. Times, Oct. 7, 1915.
- 5 European War. Germany. Protest made by Germany against French airmen dropping bombs on Luxembourg. N. Y. Times, Oct. 7, 1915.
- 6 Greece. Premier E. Venezelos of Greece resigned. N. Y. Times, Oct. 6, 1915.

October, 1915.

- 9 European War. Serbia. Belgrade occupied by Austro-Hungarian and German forces. The capital of Serbia was transferred to Nish on Oct. 8, and to Prisrend, Oct. 19. N. Y. Times, Oct. 10, 1915.
- 9 Mexico. The Secretary of State of the United States announced that the Pan-American Conference on Mexico had reached a unanimous decision in favor of the recognition of the Carranza faction as the de facto government of Mexico. N. Y. Times, Oct. 10, 1915.
- 11 DEATH OF PREMIER EYSCHEN OF LUXEMBOURG. N. Y. Times, Oct. 12, 1915.
- 11 European War. Bulgaria—Serbia. Bulgaria posted declaration of war against Serbia. N. Y. Times, Oct. 14, 1915.
- 12 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. Great Britain presented a memorandum to the United States in regard to the goods of American packers, seized while consigned to neutral countries. Text issued by the Department of State; also N. Y. Times, Oct. 12, 1915.
- 12 European War. Germany—United States. Germany sent note to the United States on the subject of passports. N. Y. Times, Oct. 13, 1915.
- 12 European War. Germany—United States. Note to Germany regarding the Frye case. Text issued by the Department of State; also N. Y. Times, Oct. 13, Oct. 19, 1915.
- 12 EUROPEAN WAR. BULGARIA—GREAT BRITAIN. Great Britain severed diplomatic relations with Bulgaria to date from 7.56 p. m., Oct. 12. N. Y. Times, Oct. 13, 1915.
- 14 EUROPEAN WAR. GERMANY. German decree forbidding the payment of money owed in Egypt and French Morocco. *Reichs-G.*, No. 142, 1915.
- 14 European War. France. Lists of absolute and conditional contraband announced. J. O., Oct. 14, Oct. 15, 1915.
- 14 EUROPEAN WAR. GREAT BRITAIN. Proclamation revising the lists of absolute and conditional contraband. London Gazette, Nos. 29327, 29328.
- 15 EUROPEAN WAR. BULGARIA—SERBIA. Serbia declared war on Bulgaria. N. Y. Times, Oct. 16, 1915.
- 15 EUROPEAN WAR. BULGARIA—GREAT BRITAIN. Great Britain de-

- October, 1915.
 - clared war on Bulgaria, dating from 10 p. m. Oct. 15. London Gazette, Nos. 29329, 29333.
- 16 EUROPEAN WAR. FRANCE—BULGARIA. France declared war on Bulgaria to date from 6 a.m. Oct. 16. J. O., Oct. 18, 1915.
- 16 EUROPEAN WAR. The Allies announced the blockade of the Ægean coast dating from 6 a. m., Oct. 16. Text: J. O., Oct. 16; N. Y. Times, Oct. 17, 1915.
- 16 EUROPEAN WAR. BULGARIA—GREAT BRITAIN. Proclamation by Great Britain extending to the war with Bulgaria the proclamations and Orders in Council in force relating to the war. London Gazette, Nos. 29329, 29333.
- 19 Mexico. The United States recognized the Carranza government as the de facto government of Mexico. N. Y. Times, Oct. 20, 1915.
- 19 EUROPEAN WAR. BULGARIA—ITALY. Italy declared war on Bulgaria. N. Y. Times, Oct. 20, 1915.
- 19 EUROPEAN WAR. JAPAN. Exchange of notes respecting the accession of Japan to the declaration of September 5, 1914, between Great Britain, France and Russia engaging not to conclude peace separately during the present war. Text: G. B. Treaty Series, No. 1, No. 9, 1915.
- 20 European War. Great Britain. Proclamation declaring it no longer expedient to follow Article 57 of the Declaration of London, which provides that the enemy or neutral character of a vessel is determined by the flag which she is entitled to fly, and ordering the British prize courts to apply the rules and principles formerly observed. London Gazette, Nos. 29338, 29340.
- 20 Mexico—United States. The United States issued two proclamations, the first placing an embargo on the shipment of arms and munitions of war into Mexico, and the second lifting the embargo on arms and munitions of war consigned to the Mexican Government represented by Carranza. N. Y. Times, Oct. 21, 1915.
- 20 European War. Bulgaria—Russia. Russia declared war on Bulgaria. Text: N. Y. Times, Oct. 20, 1915.
- 21 EUROPEAN WAR. GERMANY. German law passed forbidding the sale to foreigners of any German-owned ships. N. Y. Times, Oct. 28, 1915.
- 21 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. The United States sent note to Great Britain protesting against restrictions

October, 1915.

- on American commerce. Text issued by the Department of State; also N. Y. Times, Oct. 28, Nov. 8, 1915.
- 21 EUROPEAN WAR. TURKEY. Turkey in note to the United States denied the charges of Armenian atrocities. N. Y. Times, Oct. 22, 1915.
- 21 EUROPEAN WAR. GREAT BRITAIN—GREECE. Great Britain offered the Island of Cyprus to Greece in return for her support of the Allies. The offer was declined by Greece. N. Y. Times, Oct. 21, Oct. 23, 1915.
- 22 UNITED STATES—CHINA. Ratifications exchanged of the treaty for the advancement of peace signed September 15, 1914. U.S. Treaty Series, No. 619.
- 23 European War. France. Proclamation by France declaring it no longer expedient to follow Article 57 of the Declaration of London which provides that the enemy or neutral character of a vessel is determined by the flag which she is entitled to fly, and ordering the French prize courts to apply the rules and principles formerly observed. A similar proclamation was issued by Great Britain on October 20. J. O., Oct. 26, 1915.
- 29 EUROPEAN WAR. AUSTRIA—UNITED STATES. Second note from Austria on the munitions trade, a rejoinder to the American note of Aug. 16. Text issued by the Department of State.
- 29 China. Note verbale presented to China by Japan, Russia and Great Britain, advising China to refrain from changing her form of government at present. China declined to accept this advice and President Yuan was elected Emperor on Dec. 11, 1915. N. Y. Times, Oct. 30, Nov. 2, 1915.
- 30 European War. United States. The Department of State announced that the naval board of inquiry had reported that the *Hesperian* was sunk by a torpedo. *N. Y. Times*, Oct. 31, 1915.
- 31 European War. Netherlands. The Netherlands announced her neutrality in the war between France and Bulgaria. J. O., Oct. 31, 1915.
- 31 European War. United States—Great Britain. The steamship *Hocking*, of the Atlantic Transportation Company, and the Dutch steamer *Hamborn* were seized by the British and taken into Halifax. The *Hocking* was originally the *Ameland* and flew the Dutch

October, 1915

flag; it was purchased by one Albert Jensen, of Copenhagen, and finally renamed and transferred to American register. On November 30, the *Genesee* and *Kankakee* of the same line were seized and announcement made of their requisition without prize hearings. Upon protest from the United States, Great Britain announced that the ships had been requisitioned, but would be brought before the British prize court for adjudication. *N. Y. Times*, Dec. 2, 3, 4, 1915.

November, 1915.

- 1 United States. The United States Supreme Court declared unconstitutional the Arizona anti-alien labor law of 1914. Text of decision in this Journal, p. 158. N. Y. Times Nov. 2, 1915.
- 3 United States—Great Britain. Agreement effected by an exchange of notes extending the time for appointment of the commission under Article II of the treaty of September 15, 1915. U. S. Treaty Series, No. 602-A.
- 3 United States—Guatemala. Agreement effected by exchange of notes extending the time for appointment of the commission under Article II of the treaty of September 20, 1915. U. S. Treaty Series, No. 598-A.
- 8 European War. Germany—United States. Protest sent to Germany against the seizure of the American steamer Pass of Balmaha which was captured by a British vessel and later taken by a German vessel and ordered before the prize court at Hamburg. The Pass of Balmaha was under Canadian register at the beginning of the war, but most of the stock in the Canadian Company was owned by Americans in the Harby Ship Company. N. Y. Times, Nov. 9, 1915.
- 9 EUROPEAN WAR. The Italian liner Ancona, from Naples to New York, was sunk by an Austrian submarine. N. Y. Times, Nov. 10, 1915.
- 10 European War. Denmark. Denmark announced her neutrality in the war between France and Bulgaria. J. O., Nov. 10, 1915.
- 10 EUROPEAN WAR. GREAT BRITAIN. British Order in Council forbidding, without a special license, any British vessel of 500 gross tonnage or over, from carrying a cargo from any foreign port to any other foreign port. London Gazette, No. 29362.

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- 11 European War. France. French law passed forbidding the sale to foreigners of French ships during the war and for six months after the cessation of hostilities. J. O., Nov. 14, 1915.
- 11 EUROPEAN WAR. UNITED STATES. The United States issued a neutrality proclamation in the war between France, Great Britain, Italy, Serbia and Bulgaria. Text issued by Department of State. Proclamation No. 1317.
- 16-22 UNITED STATES—PARAGUAY. Agreement effected by exchange of notes extending the time for appointment of the commission under Article II of the treaty of August 29, 1914. U. S. Treaty Series, No. 614-A.
- 16 UNITED STATES—SWEDEN. Agreement effected by exchange of notes extending the time for appointment of the commission under Article II of the treaty of October 13, 1914. U. S. Treaty Series, No. 607-A.
- 22 EUROPEAN WAR. GREECE. Allied Powers declared a peaceful blockade of the Greek coast. N. Y. Times, Nov. 22, 1915. The blockade was lifted Dec. 15. N. Y. Herald, Dec. 16, 1915.
- 27 PANAMA—UNITED STATES. Protocol signed for the determination of amount of damages caused by the riot at Panama City July 4, 1912. U. S. Treaty Series, No. 620.
- 29 European War. Germany—United States. Germany replied to American note of October 14 relating to the Frye. Agreed to appointment of two experts, but no umpire. A draft compromise for submission to Hague Tribunal of interpretation of certain stipulations of Prussian-American treaties was enclosed. Agreement made that until decision of tribunal German naval forces will sink only such American vessels as are loaded with contraband, when the preconditions provided by the Declaration of London are present. Agreement made to the conditions that persons on board vessels sunk will not be ordered to lifeboats except where the general conditions afford absolute certainty that the boats will reach the nearest port. Text issued by the Department of State; also in N. Y. Times, Dec. 9, 1915.
- 30 Great Britain. Order in Council postponing the coming into effect of the international convention for the safety of life at sea, until July 1, 1916. This had been previously postponed to January 1, 1916. London Gazette, No. 29386.

November, 1915.

- 30 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. Great Britain requisitioned, without prize hearings, the vessels *Genesee* and *Kankakee*, of the Atlantic Transportation Company. See Oct. 31, 1915.
- 30 EUROPEAN WAR. Great Britain, Russia, France, Italy and Japan. Declaration engaging not to conclude peace separately during the present war. G. B. Treaty Series, Nos. 1 and 9, 1915; French and English texts: G. B. Treaty Series, No. 14, 1915.

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- 2 EUROPEAN WAB. GREAT BRITAIN—UNITED STATES. Protest made to Great Britain against seizures of *Hocking* and *Geneses*. N. Y. Times, Dec. 2, 3, 4, 1915.
- 3 EUROPEAN WAR. GERMANY—UNITED STATES. Recall of Captain K. Boy-Ed, Naval attaché, and Captain Franz von Papen, military attaché of the German Embassy, asked by the United States. N. Y. Times, Dec. 7, 1915.
- 6 EUROPEAN WAR. AUSTRIA-HUNGARY—UNITED STATES. The United States protested to Austria-Hungary against the sinking of the *Ancona* and demanded that the act be denounced, the officer who perpetrated the deed punished, and an indemnity paid for the American lives lost. Text: N. Y. Times, Dec. 13, 1915.
- 8 EUROPEAN WAR. FRANCE—UNITED STATES. The French cruiser Descartes searched the Porto Rican liners Coamo, Carolina and San Juan, taking from the vessels five Germans. N. Y. Times, Dec. 9, 11, 1915.
- 11 China. President Yuan Shih-Kai accepted the throne of China offered him by the Council of State. N. Y. Times, Dec. 12, 1915.
- 13 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. Note from Great Britain in reply to the American note dealing with American and British exports to neutral countries. Text: N. Y. Times, Dec. 19, 1915.
- 14 EUROPEAN WAR. FRANCE—UNITED STATES. Note from the United States to France protesting against the seizures of Germans on American ships *Coamo*, *Carolina* and *San Juan*. N. Y. Times, Dec. 15, 1915.
- 15 EUROPEAN WAR. AUSTRIA-HUNGARY—United States. Reply of Austria-Hungary to the American note of Dec. 6, relating to the

December, 1915.

- destruction of the Ancona. Text issued by the Department of State. Text: N. Y. Times, Dec. 19, 1915.
- 16 European War. United States. The House of Representatives voted to extend the war tax another year. The present law expires, Dec. 31, 1915. N. Y. Times, Dec. 17, 1915.
- 19 EUROPEAN WAR. AUSTRIA-HUNGARY—UNITED STATES. The United States sent a rejoinder to the answer of Austria-Hungary relating to the *Ancona*. N. Y. Times, Dec. 20, 1915. Text: N. Y. Times, Dec. 23, 1915.
- 22 EUROPEAN WAR. GREAT BRITAIN. British Order in Council issued requisitioning all British refrigerator ships. N. Y. Times, Dec. 23, 1915.
- 27 to January 8. Second Pan American Scientific Congress met in Washington December 27 and continued its sessions until January 8.
- 28 European War. United States. Eight indictments were returned by a federal grand jury in New York charging a Congressman, an ex-congressman, and six other men with conspiring to restrain commerce in their efforts to hinder the shipment of war supplies to the allied Powers. N. Y. Times, Dec. 28, 1915.
- 29 European War. United States—Austria-Hungary. Second note from Austria-Hungary in reply to the American note of December 19 regarding the sinking of the *Ancona*. English text: N. Y. Times, Jan. 1, 1916.
- 30 European War. British passenger steamer *Persia* sunk in the Mediterranean near Alexandria, Egypt. Robert N. McNeil, U. S. Consul at Aden, lost. N. Y. Times, Jan. 1, 1916.
- 31 European War. Great Britain announced that all post packages consigned to Germany and Austria containing contraband articles would be seized. N. Y. Times, Jan. 1, 1916.
- 31 European War. The Allies arrested the German, Austrian, Turkish and Bulgarian consuls at Salonika. N. Y. Times, Jan. 1, 1916.

INTERNATIONAL CONVENTIONS

RATIFICATIONS, ADHESIONS, DENUNCIATIONS

Collisions and Salvage. Brussels. Sept. 23, 1910.

Adhesions:

Great Britain for Canada. J. O., Oct. 8, 1914.

HAGUE CONVENTION. October 18, 1907.

Convention X—For the adaptation to naval war of the principles of the Geneva Convention.

France. French law putting into effect Convention X. J. O., Nov. 9, 1914.

INDUSTRIAL PROPERTY. Paris, 1883; Brussels, 1900; Washington, 1911. Ratifications:

Denmark. J. O., Dec. 22, 1914.

Germany and German protectorates, July 13, 1914. R. gén. de dr. int. public, 22:411.

International Commercial Statistics. Brussels, Dec. 31, 1913.
Ratifications:

Denmark, March 19, 1915. G. B. Treaty Series, No. 10, 1915. France (law putting into effect). Aug. 13, 1914. J. O., Aug. 26, 1914.

Japan, Feb. 5, 1915. G. B. Treaty Series, No. 10, 1915.

Netherlands, April 7, 1915. G. B. Treaty Series, No. 10, 1915. Adhesions:

Luxembourg, March 11, 1915. G. B. Treaty Series, No. 10, 1915.

Monaco, Nov. 5, 1914. G. B. Treaty Series, No. 10, 1915.

International Conference on Assistance to Foreigners. Paris, 1913.

Delegates from Germany, Austria-Hungary, Belgium, Denmark, Spain, United States, France, Great Britain, Netherlands, Argentine Republic, Roumania, Russia, Sweden and Switzerland adopted a projet of a convention, with resolutions and voeux. Text: R. gén. de dr. int. pub., 22:412.

LITERARY AND ARTISTIC PROPERTY. Berne, 1886, 1914. Adhesions:

Japan, Feb. 5, 1915. R. gén. de dr. int. pub., 22:428. Netherlands, April 7, 1915. R. gén. de dr. int. pub., 22:428. Spain, April 20, 1915. R. gén. de dr. int. pub., 22:428.

Phosphorus. International convention concerning use of white (yellow) phosphorus in match manufacture. Berne, September 26, 1906.

Adhesions:

Norway. J. O., Aug. 13, 1914.

Postal Convention. Rome, May 26, 1906.

Adhesions:

Spain. Modification of Article 5 announced. J. O., May 7, 1915.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912.

Ratifications:

Brazil, Dec. 18, 1914. J. O., Feb. 10, 1915. Greece, July 24, 1914. J. O., Feb. 10, 1915. Morocco, Nov. 2, 1914. J. O., Feb. 10, 1915.

Adhesions:

Colombia, Aug. 25, 1914. J. O., Feb. 10, 1915. Guatemala, July 10, 1914. J. O., Feb. 10, 1915. Panama, July 14, 1914. J. O., Feb. 10, 1915.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN 1

Aliens. British born wives and children of interned aliens. Circular to Boards of Guardians, May 19, 1915. 1½d.

Aliens Restriction Order, List of prohibited areas. 1915. 11/2d.

Aliens Restriction (Seamen) Order, July 28, 1915. (St. R. & O. 1915, No. 717.) 1½d.

American loan. (5 & 6 Geo. V, Ch. 81.) 1d.

Austrian and German papers found in possession of Mr. James F. J. Archibald, Falmouth, Aug. 30, 1915. (Cd. 8012.) 3½d.

Cavell, Miss. Correspondence with the United States Ambassador respecting the execution of, at Brussels. (Cd. 8013.) 1½d.

Contraband of war. Proclamation, Aug. 20, 1915, specifying various forms of cotton to be treated as. (St. R. & O. 1915, No. 801.) 1½d.

——. Proclamation revising the list of. Oct. 14, 1915. (St. R. & O. 1915, No. 994.) 1½d.

Customs. Proclamation, July 28, 1915, consolidating previous proclamations and orders in council prohibiting the exportation of certain articles. (St. R. & O., 1915, No. 713.) 1½d.

——. Orders in council, July 30, 1915, Aug. 3, 1915, Aug. 12, 1915, and Sept. 16, 1915, varying proclamation of July 28, 1915. (St. R. & O. 1915, Nos. 745, 747, 766, 906, 960.) 1½d. each.

Emergency legislation, Manual of. Supplement No. 4, to Aug. 31, 1915. 2s. 11d.

European War. Correspondence relating to the occupation of German Samoa by an expeditionary force from New Zealand. (Cd. 7972.) 3½d.

- Exchange of notes respecting the accession of Japan to the declaration of Sept. 5, 1914, between the United Kingdom, France, and Russia, engaging not to conclude peace separately. London, Oct. 19, 1915. (Treaty series, 1915, No. 9.) 1d.
- ¹ Official publications of Great Britain and many of the British colonies may be purchased of Wyman & Sons, Ltd., Fetter Lane, E. C., London, England.

- ——. Naval and military despatches relating to the operations of the war. Part II. November, 1914, to June, 1915. With map. 9s. Export, Prohibitions of, in force in British India, the self-governing dominions, Egypt, and certain other British possessions. 4½d.
- ———. Prohibitions of export in force in the United Kingdom, in allied countries, and in neutral countries in Europe. 4½d.

Exportations to China and Siam. Proclamation, Sept. 24, 1915, prohibiting exportation of all articles to China and Siam unless consigned as therein specified. (St. R. & O. 1915, No. 932.) 1½d.

Exportations to the Netherlands. Order in Council, Oct. 7, 1915, amending proclamation of June 25, 1915, prohibiting the exportation of all articles to the Netherlands unless consigned as therein specified. (St. R. & O. 1915, No. 972.)

"Falaba," S. S., Report of formal investigation into the circumstances attending the foundering of the, on March 28, 1915. (Cd. 8021.) 2d.

Honduras, Treaty of commerce and navigation between the United Kingdom and, signed at Guatemala, May 5, 1910; ratifications exchanged June 21, 1915. (Treaty series, 1915, No. 7.) 1½d.

"Lusitania," S. S., Report of formal investigation into the circumstances attending the foundering of the, on May 7, 1915. (Cd. 8022.) 2d.

Mesopotamia and Persian Gulf, Despatches regarding military operations in. (Cd. 8074.) 7d.

Netherlands, Convention between the United Kingdom and, renewing for a further period of five years the arbitration convention of Feb. 15, 1905. Signed London, March 25, 1915. (Treaty series, 1915, No. 5.) 1d.

Russia, Agreement between the United Kingdom and, for the reciprocal waiver of consular fees on certificates of origin relating to exports, signed at Petrograd, July 3 (16), 1915. (Treaty series, 1915, No. 8.) 1d.

State Papers, British and Foreign. 1911. Vol. 104. 10s. 6d.

——. Domestic Series, January 1, 1679, to August 31, 1680. 15s. 6d.

Switzerland, Convention additional to the treaty of friendship, commerce and reciprocal establishment between the United Kingdom and Switzerland of Sept. 6, 1855. Signed at London, March 30, 1914. (Treaty series, 1915, No. 6.) 1d.

Trading with the Enemy. Proclamation further defining the expression "enemy" in the Trading with the Enemy Proclamations. Sept. 14, 1915. (St. R. & O. 1915, No. 903.) 1½d.

Trading with the enemy amendment act. (5 & 6 Geo. V, Ch. 79.) 1d.

UNITED STATES 2

Consular regulations of foreign countries: Canada and Latin America. July, 1915. (Tariff series 24, revised ed.) Paper, 15c. Foreign and Domestic Commerce Bureau.

Enlistment, foreign. Memorandum of law on construction of sec. 10 of Federal Penal Code, concerning enlistment in service of foreign prince, etc., of any person within territory or jurisdiction of United States, by Charles Warren. 1915. 30 p. Dept. of Justice.

Foreign correspondence. Memorandum on history and scope of laws prohibiting correspondence with a foreign government, and acceptance of commission to serve a foreign state in war, secs. 5 and 9, Federal Penal Code, by Charles Warren. 1915. 27 p. Dept. of Justice.

Foreign sovereignties and rulers, list of. 10th ed. July 15, 1915. 1 p. Naturalization Bureau.

Immigration laws, rules of Nov. 15, 1911. 6th ed., October, 1915. 69 p. Immigration Bureau.

Mexico, Export of arms, etc., to. Proclamation No. 1315, Oct. 19, 1915. State Dept.

Netherlands, Agreement between United States and, extending duration of arbitration convention of May 2, 1908. Signed Washington, May 9, 1914, proclaimed Aug. 21, 1915. 4 p. (Treaty series 617.) [English and Dutch.] State Dept.

Neutrality. Diplomatic correspondence with belligerent governments relating to neutral rights and duties. 1915. 198 p. (The White Book, No. 2, printed and distributed Oct. 21, 1915.) Paper, 75c. State Dept.

- ² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Parcel post convention between United States and Argentine Republic, signed Washington, March 12, 1915, approved March 15 and Sept. 15, 1915. 13 p. [English and Spanish.] *Post Office Dept.*

Peace, Treaty between United States and China for advancement of, signed Washington, Sept. 15, 1915, proclaimed Oct. 23, 1915. 6 p. (Treaty series 619.) State Dept.

Peace treaty between United States and Italy, May 5, 1914. Agreement effected by exchange of notes extending time for appointment of commission under, signed Sept. 18, 1915. (Treaty series 615½.) State Dept.

Peace treaties, general, of 1914, ratified and made public. 114 p. Senate.

Radio communication laws of United States and international radiotelegraphic convention signed at London, July 5, 1912, regulations governing radio operators and use of radio apparatus on ships and on land. Edition, July 27, 1914, reprint 1915, with addenda. 100 p. il. Paper, 15c. Bureau of Navigation.

Ships, Measurement of. Regulations interpreting laws relating to admeasurement of vessels, with laws of United States and Suez Canal Regulations, July 13, 1915 (with list of references). 84 p. Paper, 10c. 2d ed., Sept. 22, 1915. Paper, 15c. Bureau of Navigation.

Spain, Guide to law and legal literature of, by Thomas W. Palmer, Jr. 1915. 174 p. Cloth, 50c. Library of Congress.

GEO. A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

TRUAX AND THE ATTORNEY GENERAL OF THE STATE OF ARIZONA V. RAICH

Supreme Court of the United States

Decided November 1, 1915

A law enacted by the State of Arizona and proclaimed by the Governor on December 14, 1914, provided that

Any company, corporation, partnership, association or individual who is, or may hereafter become an employer of more than five (5) workers at one time, in the State of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than eighty (80) per cent qualified electors or native-born citizens of the United States or some sub-division thereof.

Raich (the appellee), a native of Austria, and an inhabitant of Arizona but not a qualified elector, was employed as a cook by the appellant, William Truax, Sr., in his restaurant in Bisbee, Ariz. Truax had nine employés, seven of whom were neither native-born citizens of the United States nor qualified electors. After the passage of the act, Truax informed Raich that, by reason of its requirements and because of the fear of the penalties that would be incurred in case of its violation, he would be discharged when the law was proclaimed. Thereupon Raich filed a bill in equity in the District Court of the United States asserting that the act denied him the equal protection of the laws and hence was contrary to the Fourteenth Amendment of the Constitution of the United States. and sought a decree declaring the act to be unconstitutional and restraining the State officers and his employer from taking action thereunder. After a hearing before three judges, the United States District Court granted an injunction restraining the Attorney General of the State and the county attorney from enforcing the act against Truax. (219 Fed. Rep. 273.) An appeal from this decision was taken to the Supreme Court of the United States. After disposing of several contentions of the defendants in support of their motion to dismiss the bill, the

Supreme Court, speaking through Mr. Justice Holmes, decided upon the constitutional question as follows:

The question then is whether the act assailed is repugnant to the Fourteenth Amendment. Upon the allegations of the bill, it must be assumed that the complainant, a native of Austria, has been admitted to the United States under the Federal law. He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union. (See Gegiow v. Uhl, Commissioner, decided October 25, 1915, ante, p. 3.) Being lawfully an inhabitant of Arizona, the complainant is entitled under the Fourteenth Amendment to the equal protection of its laws. The description—'any person within its jurisdiction'—as it has frequently been held, includes aliens. "These provisions," said the court in Yick Wo v. Hopkins, 118 U. S. 356, 369 (referring to the due process and equal protection clauses of the Amendment), "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." See also Wong Wing v. United States, 163 U. S. 228, 242; United States v. Wong Kim Ark, 169 U. S. 649, 695. The discrimination defined by the act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the State, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other States. Thus in McCready v. Virginia, 94 U.S. 391, 396, the restriction to the citizens of Virginia of the right to plant oysters in one of its rivers was sustained upon the ground that the regulation related to the common property of the citizens of the State, and an analogous principle was involved in Patsone v. Pennsylvania, 232 U.S. 138, 145, 146, where the discrimination against aliens upheld by the court had for its object the protection of wild game within the State with respect to which it was said that the State could exercise its preserving power for the benefit of its own citizens if it pleased. The case now presented is not within these decisions, or within those relating to the devolution of real property (Hauenstein v. Lynham, 100 U. S. 483; Blythe v. Hinckley, 180 U.S. 333, 341, 342); and it should be added that the act is not limited to persons who are engaged on public work or receive the benefit of public moneys. The discrimination here involved is imposed upon the conduct of ordinary private enterprise.

The act, it will be observed, provides that every employer (whether

corporation, partnership, or individua' who employs more than five workers at any one time "regardless of kind or class of work, or sex of workers" shall employ "not less than eighty per cent qualified electors or native-born citizens of the United States or some subdivision thereof." It thus covers the entire field of industry with the exception of enterprises that are relatively very small. Its application in the present case is to employment in a restaurant the business of which requires nine employés. The purpose of an act must be found in its natural operation and effect (Henderson v. Mayor, 92 U. S. 259, 268; Bailey v. Alabama, 219 U.S. 219, 244), and the purpose of this act is not only plainly shown by its provisions, but it is frankly revealed in its title. It is there described as "An act to protect the citizens of the United States in their employment against non-citizens of the United States, in Arizona." As the appellants rightly say, there has been no subterfuge. It is an act aimed at the employment of aliens, as such, in the businesses described. Literally, its terms might be taken to include with aliens those naturalized citizens who by reason of change of residence might not be at the time qualified electors in any subdivision of the United States, but we are dealing with the main purpose of the statute, definitely stated, in the execution of which the complainant is to be forced out of his employment as a cook in a restaurant, simply because he is an alien.

It is sought to justify this act as an exercise of the power of the State to make reasonable classifications in legislating to promote the health, safety, morals and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does go so far as to make it possible for the State to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment to secure. Butchers' Union Co. v. Crescent City Co., 111 U.S. 746, 762; Barbier v. Connolly, 113 U.S. 27, 31; Yick Wov. Hopkins, supra; Allgeyer v. Louisiana, 165 U.S. 578, 589, 590; Coppage v. Kansas, 236 U.S. 1, 14. If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that "the employment of aliens unless restrained was a peril to the public welfare." The discrimination against aliens

in the wide range of employments to which the act relates is made an end in itself and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor is necessarily involved. It must also be said that reasonable classification implies action consistent with the legitimate interests of the State, and it will not be disputed that these cannot be so broadly conceived as to bring them into hostility to exclusive Federal power. The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. Fong Yue Ting v. United States, 149 U.S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as choose to offer hospitality.

It is insisted that the act should be supported because it is not "a total deprivation of the right of the alien to labor"; that is, the restriction is limited to those businesses in which more than five workers are employed, and to the ratio fixed. It is emphasized that the employer in any line of business who employs more than five workers may employ aliens to the extent of twenty per cent of his employes. But the fallacy of this argument at once appears. If the State is at liberty to treat the employment of aliens as in itself a peril requiring restraint regardless of kind of work, it cannot be denied that the authority exists to make its measures to that end effective. Otis v. Parker, 187 U. S. 606; Silz v. Hesterburg, 211 U.S. 31; Purity Extract Co. v. Lynch, 226 U.S. 192. If the restriction to twenty per cent now imposed is maintainable the State undoubtedly has the power if it sees fit to make the percentage less. We have nothing before us to justify the limitation to twenty per cent save the judgment expressed in the enactment, and if that is sufficient, it is difficult to see why the apprehension and conviction thus evidenced would not be sufficient were the restriction extended so as to permit only ten per cent of the employés to be aliens or even a less percentage, or were it made applicable to all businesses in which more than three workers were employed instead of applying to those employing more than five. We have frequently said that the legislature may recognize degrees

of evil and adapt its legislation accordingly (St. Louis Consol. Coal Co. v. Illinois, 185 U. S. 203, 207; McLean v. Arkansas, 211 U. S. 539, 551; Miller v. Wilson, 236 U. S. 373, 384); but underlying the classification is the authority to deal with that at which the legislation is aimed. The restriction now sought to be sustained is such as to suggest no limit to the State's power of excluding aliens from employment if the principle underlying the prohibition of the act is conceded. No special public interest with respect to any particular business is shown that could possibly be deemed to support the enactment, for as we have said it relates to every sort. The discrimination is against aliens as such in competition with citizens in the described range of enterprises and in our opinion it clearly falls under the condemnation of the fundamental law.

The question of rights under treaties was not expressly presented by the bill, and, although mentioned in the argument, does not require attention in view of the invalidity of the act under the Fourteenth Amendment.

Order affirmed.

HEIM V. MCCALL

Supreme Court of the United States

Decided November 29, 1915

Section 14 of the Labor Law of the State of New York 1 provides that

In the construction of public works by the State or a municipality, or by persons contracting with the State or such municipality, only citizens of the United States shall be employed; and in all cases where laborers are employed on any such public works, preference shall be given citizens of the State of New York. In each contract for the construction of public works a provision shall be inserted, to the effect that, if the provisions of this section are not complied with, the contract shall be void.

The requirements of this section were incorporated into the contracts let by the Public Service Commission for the First District of the State of New York for the construction of additional subway lines in the City of New York. In the course of construction the contractors employed a large number of laborers and mechanics who were Italian subjects. Complaint was made to the Public Service Commission of the violation

Laws 1909, Ch. 36, Consol. Laws, Ch. 31. This section was amended by Act of March 11, 1915, Ch. 51, Laws of New York, 1915, so as to read that in the construction work referred to "preference shall be given to citizens over aliens," and that "aliens may be employed when citizens are not available."

of the law and the alien labor provision in the contracts and the Commission refused to approve monthly payments due to the contractors and threatened to declare the contracts void. A bill in equity was then filed to restrain the Public Service Commission from taking such action. The bill alleged, among other things, that the law was unconstitutional for the reason that its enforcement would deprive employers and employes of liberty and property without due process of law and deny to both the equal protection of the laws, and because it was in violation of the treaty of 1871 between the United States and Italy which, it was contended, put aliens within the State of New York upon an equality with citizens of the State with respect to the right to labor upon public works. The case reached the Court of Appeals of New York, which ordered the bill dismissed, and an appeal was taken to the Supreme Court of the United States. Adopting the findings of the New York Court of Appeals on the points of local law decided by it, the Supreme Court of the United States, by Mr. Justice McKenna, delivered the following opinion on the constitutional and treaty questions involved:

The contentions of plaintiffs in error under the Constitution of the United States and the arguments advanced to support them were at one time formidable in discussion and decision. We can now answer them by authority. They were considered in Atkin v. Kansas, 191 U. S. 207, 222, 223. It was there declared, and it was the principle of decision, that "it belongs to the State, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities." And it was said, "No court has authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy. And with such considerations the courts have no concern."

This was the principle declared and applied by the Court of Appeals in the decision of the present case. Does the instance of the case justify the application of the principle? In Atkin v. Kansas the law attacked and sustained prescribed the hours (8) which should constitute a day's work for those employed by or on behalf of the State, or by or on behalf of any of its subdivisions. The Fourteenth Amendment was asserted against the law; indeed, there is not a contention made in this case that was not made in that. * * * In all particulars except one the case was the prototype of this. There the hours of labor were prescribed; here the kind of laborers to be employed. The one is as much of the

essence of the right regulated as the other, that is, the same elements are in both cases. * * * The contentions of plaintiffs in error, therefore, which are based on the Fourteenth Amendment cannot be sustained.

Are plaintiffs in error any better off under the treaty provision which they invoke in their bill? The treaty with Italy is the one especially applicable, for the aliens employed are subjects of the King of Italy. By that treaty (1871) it is provided, Articles II and III, 17 Stat. 845, 846:

The citizens of each of the high contracting parties shall have liberty to travel in the states and territories of the other, to carry on trade, wholesale and retail, to hire and occupy houses and warehouses, to employ agents of their choice, and generally to do anything incident to, or necessary for trade, upon the same terms as the natives of the country, submitting themselves to the laws there established.

The citizens of each of the high contracting parties shall receive, in the states and territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives.

There were slight modifications of these provisions in the treaty of 1913, as follows:

That the citizens of each of the high contracting parties shall receive, in the states and territories of the other, the most constant security and protection for their persons and property and for their rights. * * *

Construing the provision of 1871 the Court of Appeals decided that it "does not limit the power of the State, as a proprietor, to control the construction of its own works and the distribution of its own moneys." The conclusion is inevitable, we think, from the principles we have announced. We need not follow counsel in dissertation upon the treatymaking power or the obligations of treaties when made. The present case is concerned with construction, not power; and we have precedents to guide construction. The treaty with Italy was considered in Patsone v. Pennsylvania, 232 U.S. 138, 145, and a convention with Switzerland (as in the present case) which was supposed to become a part of it. It was held that a law of Pennsylvania making it unlawful for unnaturalized foreign-born residents to kill game and to that end making the possession of shotguns and rifles unlawful, did not violate the treaty. Adopting the declaration of the court below, it was said "that the equality of rights that the treaty assures is equality only in respect of protection and security for persons and property." And the ruling was given point by a citation of the power of the State over its wild game which might be preserved for its own citizens. In other words, the ruling was given point by the special power of the State over the subject-matter, a power which exists in the case at bar, as we have seen.

From these premises we conclude that the Labor Law of New York and its threatened enforcement do not violate the Fourteenth Amendment or the rights of plaintiffs in error thereunder nor under the provisions of the treaty with Italy.

Judgment affirmed.

MACKENZIE V. HARE ET AL., BOARD OF ELECTION OF SAN FRANCISCO

Supreme Court of the United States

Decided December 6, 1915

This is an appeal from the decision of the Supreme Court of California, rendered August 5, 1913, and printed in the July, 1914, number of the Journal (Vol. 8, p. 665). The petitioner, a native-born citizen of the United States and a resident of the State of California, married a British subject. After her marriage she continued to reside with her husband in California and, upon application to be registered as a voter, her request was denied on the ground that, by her marriage to a British subject, she took the nationality of her husband and ceased to be a citizen of the United States. The petitioner claims the right to vote under the Constitution of the State of California, which gives the suffrage "to every native citizen of the United States," and under the Constitution of the United States is a citizen thereof. Prior to the marriage of the plaintiff, Congress enacted the Citizenship Act of March 2, 1907, section 3 of which provides:

That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registration as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

The plaintiff contended, first, that this legislation applied only to citizens residing abroad and not to citizens who reside in the United States, but the court declined to limit the application of the act in this way and construed it to include all American citizens wherever residing. The petitioner then contended that, if the act applied to her, it was unconstitutional, the argument being that "the citizenship of plaintiff was an incident to her birth in the United States and, under the Constitution and laws of the United States, it became a right, privilege and immunity which could not be taken away from her except as a punishment for crime or by her voluntary expatriation."

After summarizing the arguments, the court, speaking through Mr. Justice McKenna, decided as follows:

It would make this opinion very voluminous to consider in detail the argument and the cases urged in support of or in attack upon the opposing conditions. Their foundation principles, we may assume, are known. The identity of husband and wife is an ancient principle of our jurisprudence. It was neither accidental nor arbitrary and worked in many instances for her protection. There has been, it is true, much relaxation of it but in its retention as in its origin it is determined by their intimate relation and unity of interests, and this relation and unity may make it of public concern in many instances to merge their identity, and give dominance to the husband. It has purpose, if not necessity, in purely domestic policy; it has greater purpose and, it may be, necessity, in international policy. And this was the dictate of the act in controversy. Having this purpose, has it not the sanction of power?

Plaintiff contends, as we have seen, that it has not, and bases her contention upon the absence of an express gift of power. But there may be powers implied, necessary or incidental to the expressed powers. As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers. But monition is not necessary in the present case. There need be no dissent from the cases cited by plaintiff; there need be no assertion of very extensive power over the right of citizenship or of the imperative imposition of conditions upon it. It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences. We concur with counsel that citizenship is of tangible worth, and we sympathize with plaintiff in her desire to retain it and in her earnest assertion of it. But there is involved more than personal considerations. As we have seen, the legislation was urged by conditions of national moment. And this is an answer to the apprehension of counsel that our construction of the legislation will make every act, though lawful, as marriage, of course, is, a renunciation of citizenship. The marriage of an American woman with a foreigner has consequences of like kind, may involve national complications of like kind, as her physical expatriation may involve. Therefore, as long as the relation lasts it is made tantamount to expatriation. This is no arbitrary exercise of government. It is one which, regarding the international aspects, judicial opinion has taken for granted would not only be valid but demanded. It is the conception of the legislation under review that such an act may bring the Government into embarrassments and, it may be, into controversies. It is as voluntary and distinctive as expatriation and its consequence must be considered as elected.

Judgment affirmed.

Ex Parte Weber

British Court of Appeal

Decided July 26, 1915

(The Times Law Reports, Volume 31, page 602)

This was an application by way of appeal from the refusal of the Divisional Court to grant a writ of habeas corpus in the case of Antonius Charles Frederick Weber, who was interned in the Isle of Man as an alien enemy.

The facts and arguments fully appear from the judgment.

Lord Justice Swinfen Eady, in giving judgment, said that assuming, without deciding, that in such a case as the present an appeal lay to that court, he was of opinion that the application failed on the merits. The appellant Weber was 32 years of age. He was born on January 30, 1883, at Neuwied, in Germany. He left Germany when he was a little over 15 years of age and he went to South America and after living there for two or three years he came to England, where he stated that he had lived since about January, 1901. In January, 1903, he married Johanna Maria, widow of John Van Rhyn, a Dutchman. The lady was herself originally of Dutch nationality. She was a widow with three children, and there had been two children born of that marriage. The appellant

stated that he lived with his wife in Hackney and that his occupation was that of confidential clerk and cashier to M. Simon Milandre, a Frenchman who lived and carried on business near Paris as a dealer in poultry. He had been interned and the ground of his present application was that he disputed that he was an alien enemy and he contended that he was of no nationality whatever. Born in Germany and having lived in Germany until he was nearly fifteen years of age, he said that he had lost German nationality by virtue of the law passed on June 1, 1870, before the Franco-German War, which provided that Germans who left the territory of the Confederation and resided for 10 years uninterruptedly abroad ipso facto lost their nationality.

He stated that the term of ten years was calculated from the moment of leaving German territory, or, in case they were in possession of a passport or of a *Heimatschein* (and there was some conflict as to what the document exactly was), from the moment when the document ceased to have currency—that was to say, one year after the date of its issue. In one of the documents this *Heimatschein* was translated as being a certificate of nativity. Dr. Schirrmeister-Marshal, an English barrister and a former German who had been naturalized, stated that the true and proper translation of *Heimatschein* was not a certificate; he stated that it was mistranslated in the official English translation, and that it was a document prepared by the authorities of one Federal State certifying that the person named in it was a subject of that State, and that such a certificate was in use chiefly when the subject of one Federal State intended to visit another, in which case a passport was unsuitable, and that such certificates had now become obsolete.

In support of the application, Dr. Schirrmeister-Marshal stated, as a matter of legal opinion, that in the statute of 1870 there was no exception of persons under 21, and that it had been judicially determined in Germany that the mere expiration of the statutory period of ten years or eleven years as the case might be was sufficient in all cases to deprive the party of his German nationality.

A new statute had been passed in Germany dated July 22, 1913. It was said that the statute was not retrospective. He was not satisfied of that. He had to consider the effects of these two statutes. It was said that under the new statute if the applicant had not lost his nationality previously he certainly lost it on attaining the age of 31 years. In his Lordship's opinion the applicant had failed to establish that he had entirely lost for all purposes his German nationality. It was said

that the law of 1870 was passed to free the German Government from the burden of protecting abroad persons who had been absent for that period; but it was quite manifest when the provisions of the laws of 1870 and 1913 were compared that the applicant had not entirely lost his German nationality for all purposes whatever. If he were to return to Germany, and if in the language of section 26 of the Act of 1913 he were to prove "that no blame attached to him, the Federal State to which he formerly belonged may not refuse to naturalize him."

Moreover, in certain cases even without returning to Germany, a person who had lost nationality in the circumstances which he had mentioned, even if in the meantime he had acquired a foreign domicile, might still, according to the language of the statute, recover his nationality. In other words, although his position might be affected by his absence from Germany he had not entirely lost his nationality of origin. In those circumstances the applicant had failed to establish by the evidence which he had adduced that he was not an alien enemy. It would be sufficient to say that he had failed to satisfy the court that he had ceased to be of German nationality. He was not, therefore, entitled to have recourse to the court for a writ of habeas corpus.

Lord Justice Phillimore and Lord Justice Bankes agreed.

THE ANTARES (AND FOUR OTHER VESSELS)

British Prize Court

Decided March 8, 1915

(The Times Law Reports, Volume 31, page 290)

By Order I, Rule 2, of the Prize Court Rules, 1914, "Unless the contrary intention appears, the provisions of these rules relative to ships shall extend and apply, mutatis mutandis, to goods." By Order XXIX, Rule I, where the Lords of the Admiralty desire to requisition a ship and there is no reason to believe that the ship is entitled to be released, the judge shall order the ship to be appraised and to be delivered to them, "Provided that no order shall be made by the judge under this rule in respect of a ship which he considers there is good reason to believe to be neutral property." By Rule 3, where a ship is required forthwith for the service of the Crown, a judge can order it to be forthwith released to the Lords of the Admiralty without appraisement.

Certain copper was shipped at New York by an American company on board a Norwegian vessel and was consigned to Sweden, and was bought afloat by Swedish subjects under a contract guaranteeing that it was for consumption in Norway and /or Sweden. While the vessel was at sea, copper was declared absolute contraband, and the copper in question afterwards was seized at sea and brought to Liverpool, and the Crown issued a writ in prize claiming that the goods were liable to confiscation. Subsequently an order was made ex parte by the registrar instructing the marshal to release the copper to the Lords of the Admiralty, who wished to requisition it. On an application to discharge the order

Held, that though there was sufficient doubt as to whether the goods were entitled to be released to prevent the order from being bad on the ground that there was reason to believe that they were so entitled, yet as they were neutral property it was impossible for the Crown to requisition them, and therefore the order must be discharged.

THE OPHELIA

British Prize Court

Decided May 21, 1915

(The Times Law Reports, Volume 31, page 452)

This was a German vessel captured by a British warship and taken into port and detained as prize. A claim for her release was made on behalf of the Government of Germany on the ground that the vessel was a military hospital ship belonging to that government, and was therefore exempt from capture under the provisions of Article I of the Hague Convention of 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention. The Crown admitted that the formal requirements of the convention necessary to bring a vessel within the exempted class had been complied with, and stated that it

¹ The pertinent part of this article reads as follows: "Military hospital ships, that is to say, ships constructed or assigned by states specially and solely with a view to assisting the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and cannot be captured while hostilities last."

lesired that full effect be given to the principles of the convention. was claimed, however, that the *Ophelia*, though ostensibly a hosp ship, was actually used as a scouting or signalling vessel of the Gernavy and, therefore, under Article 4 of the Hague Convention² was entitled to immunity from capture.

The court's investigation of the facts developed that, at the tim capture on October 18, 1914, the Ophelia was encountered in the cinity of a recent naval engagement during which several Gern torpedo boats had been sunk; that upon the approach of the board party from the British cruiser, the commander of the Ophelia th overboard a number of secret documents, including a code, a lis wireless stations, mine areas, etc., and a wireless log. The vague of the orders under which the vessel was operating and the hesitanc the commander in answering questions as to his movements created suspicion that the vessel was engaged in transmitting intelligence the enemy. It was also developed that the Ophelia had been encounted by a British submarine about ten days previous to her capture and fled in order to escape search. The court found that on that occathe vessel, while claiming to be in search of survivors from a sun German submarine, had taken 48 hours to cover a distance of 60 n which she could have covered in less than six hours, and that there "no explanation of this lamentable and possibly fatal delay on the par a hospital ship, which is said to have been on a mission to try to resurvivors. She saw no survivors and no corpses in her search, wl was not only belated, but which was very short and inadequate. The was an entire absence of the care, deliberation, thoroughness, and c pleteness to be expected in such a search."

The commander of the *Ophelia* admitted that on the previous o sion referred to, he left the vicinity shortly after sighting the British marine, but denied that he fled from it, upon which the court commen

Upon the disputed question which the account given by the commander reone naturally asks why, as the hospital ship saw the submarine more than once did not speed towards it rather than away from it, in order to try to get some is mation about the locus of the accident or the saving of the seamen or the possit of rescuing survivors? Those in command of a genuine hospital ship on a hur quest would not fear any harm or ill-treatment from a British submarine or any c war vessel.

² Paragraph 2 of Article 4 reads as follows: "The governments undertake no use these ships for any military purpose."

THE COMPORTED WHEN THE COPING WAS INCLODED AN AUAIMALY sporting the sick and wounded to land hospitals, and that as "there is no standard of suitability either of juipment for a hospital ship * * * I am not pre-* that the ship was not, in fact, adapted, albeit, imperfectly, for the proper purposes of a hospital aratus and appliances suitable for signalling which the ship, raised a strong doubt in the mind of the ier the vessel was constructed and adapted solely for . An exceptionally large number of lights of different I upon the vessel and British naval experts testified loubtedly fitted and intended for signalling purposes. to what quantity of these lights and signalling applised and as to the times and purposes for which they insatisfactory and, furthermore, the records which aformation had been burned surreptitiously after the ip and while she was in custody awaiting trial. The ve weight to the spoliation of these documents and essel in the following language:

usually dealt with the spoliation of documents like documents relating to cargoes; hospital ships were ormer days, but in my opinion the principles apply o say the least, to documents which would throw light which a ship purporting to be solely a hospital ship had There is a useful summary of the effect of the cases of Dr. Lushington in the *Johanna Emilie* (Spinks at the following passages:

I as to the spoliation of papers generally. I do not know that in any of Lord Stowell's judgments any direct definition of the

at the mere destruction of papers is not, under all circumstances, poliation; I say under all circumstances, because the principle a very absurd length. I apprehend it might be said, if at any

time during a long voyage the master destroyed papers that had no relevancy to it, relating to a former voyage, the matter would not be put in issue. To say that was a spoliation of papers, would be going the length of saying that nothing in the nature even of a private letter was to be destroyed after the vessel had left her port. I am not, however, disposed to relax the practical effect of the rules laid down by Lord Stowell, because they are consistent with good sense, and with justice to all parties; but they must not be pressed beyond his true intention with reference to all the facts of the case.

Now, let me say a word on this, as to the time at which the papers are destroyed. I pray that my meaning may not be understood beyond the words I use. I hold time to be of great importance. If papers are destroyed when the capturing vessel is in sight, or there is a chance of capture, it is the strongest proof that these papers contain some matter which would inure to condemnation; so it is if they are destroyed at the time of capture, and if they are destroyed clandestinely after capture, but if the papers are destroyed a long time antecedently, before there is any probability that they were destroyed for fraudulent purposes, and there is no evidence that it was for fraudulent purposes, then, though there is spoliation, and though, no doubt, the inference of law is against the act during war, yet the case is of a less stringent nature.

Upon this important subject I will also cite what Chancellor Kent says in his well-known Commentaries:

The concealment of papers material for the preservation of the neutral character justifies a capture, and carrying into port for adjudication, though it does not absolutely require a condemnation. It is good ground to refuse costs and damages on restitution, or to refuse further proof to relieve the obscurity of the case, where the cause labored under heavy doubts, and there was prima facie grounds for condemnation independent of the concealment. The spoliation of papers is a still more aggravated and inflamed circumstance of suspicion. That fact may exclude further proof, and be sufficient to infer guilt; but it does not, in England, as it does by the maritime law of other countries, create an absolute presumptio juris et de jure; and yet a case that escapes with such a brand upon it is saved so as by fire. The Supreme Court of the United States has followed the less rigorous English rule, and held that the spoliation of papers was not, of itself, sufficient ground for condemnation, and that it was a circumstance open for explanation, for it may have arisen from accident, necessity, or superior force. If the explanation be not prompt and frank, or be weak and futile, if the cause labors under heavy suspicions, or there be a vehement presumption of bad faith or gross prevarication, it is good cause for the denial of further proof, and the condemnation ensues from defects in the evidence, which the party is not permitted to supply (p. 158 of Vol. 1, 12th edition).

These are sound and salutary doctrines. In my judgment they are in a special sense applicable to ships claiming to be hospital ships.

In proportion to the immunity and protection which every belligerent Power actuated by feelings of humanity would desire to extend to ships engaged in aiding and rescuing those who suffer in maritime war, the conduct of those ships should be beyond suspicion.

About the innocence of hospital ships from engaging in warlike services there ought to be no question. Their records should be clean. If they are, their preservation would be an additional safeguard against capture. If they are not preserved, but destroyed, the inference, that, if produced, they would be silent but eloquent witnesses of guilty practices would be strong.

As to some of the documents on board, such as the secret codes for wireless telegraphy, the Law Officers of the Crown did not complain of their destruction. In my view even documents like these ought not to be destroyed. They might be required to test the accuracy of the versions given of messages sent and received. They could quite appropriately be sealed up, if that were deemed advisable; and, so sealed, they would not be opened except under the strict superintendence of the court; and the belligerents might rest assured that no disclosure would be made or allowed which would in any way affect the belligerent.

But whatever might be said in justification or palliation of the destruction of documents of this nature by reason of the orders of those in high command or otherwise, some of the other documents which were destroyed should certainly have been preserved and given up. Books recording messages transmitted or received by wireless telegraphy, or by any form of signals, directing the operations of the ship, ought to be kept. If such messages related to the legitimate work of hospital ships they would not harm those in charge or prejudicially affect the ship itself. If they are destroyed on the eve of capture, no one could reasonably complain if unfavorable inferences were drawn. burning in November (some fortnight or more after the ship was captured) of the records of the various signalling lights which had been supplied, and which had been used upon the ship since she set cut as a hospital ship, I see no justification whatsoever. By the express terms of the convention, the right of search of hospital ships is given to belligerents. If those in charge of such ships can with impunity destroy all the documents and records of the ship immediately before a searching officer boards her, the right of search becomes to a great extent nugatory.

The conclusions to which the evidence compelled me to come are that the *Ophelia* was not constructed, adapted, or used for the special and sole purpose of affording aid and relief to the wounded, sick, and shipecked; and that she was adapted and used as a signalling ship for itary purposes. She has, therefore, forfeited the protection claimed ler the convention.

The decree of the court is that the *Ophelia*, being an enemy ship, is idemned as lawful prize.

THE SOUTHFIELD

British Prize Court

Decided July 15, 1915

(The Times Law Reports, Volume 31, page 577)

The President in delivering judgment said:

The questions arising for decision depend upon the effect of the invention of a state of war upon the rights of capture of a belligerent respect of goods sold by an enemy to a neutral while the goods and ship in which they are laden are in transitu. The goods consisted quantities of barley shipped before the war at a Russian port upon a itish ship and consigned to a German port. During the voyage the ds were sold by enemy merchants to neutral merchants—viz., to o Dutch merchants, Heukers and Barghoorn, carrying on business at oningen. The transactions relating to the sale to Heukers fell within period from July 20 to July 28, 1914, and those relating to the sale Barghoorn within the last week in July, 1914. Apart from any quesn depending upon the intervention of war, it is not disputed that the perty in the goods had passed to the neutral purchasers before the oture. The contention of the Crown was that when war was declared ween this country and Germany on August 4, 1914, the goods which re still in transitu became subject to capture by the Crown, and were ifiscable at the time of the capture and seizure on August 8, notthe that at the characteristic states to the neutrals, on the ground that at the ie of such sales war was imminent, or in contemplation of the enemy idors.

It is important to examine closely the principle which governs the ht of capture of goods transferred *in transitu* and to ascertain accuely its limits, as it is sometimes apt to be loosely stated.

In order to deduce the rule, it will be sufficient, I think, to refer to

two leading cases, and to one authorized text book. I take them in order of date.

In the *Vrow Margaretha* (1 C. Rob., 336) Lord Stowell pronounces upon the subject as follows:

In the ordinary course of things in time of peace—for it is not denied that such a contract may be made, and effectually made (according to the usage of merchants) such a transfer in transitu might certainly be made. It has even been contended that a mere delivering of the bill of lading is a transfer of the property. But it might be more correctly expressed, perhaps, that it fransfers only the right of delivery; but that a transfer of the bill of lading, with a contract of sale accompanying it, may transfer the property in the ordinary course of things, so as effectually to bind the parties, and all others, cannot well be doubted. When war intervenes another rule is set up by courts of admiralty, which interferes with the ordinary practice. In a state of war, existing or imminent, it is held that the property shall be deemed to continue as it was at the time of shipment till the actual delivery; this arises out of the state of war, which gives a belligerent a right to stop the goods of his enemy. If such a rule did not exist, all goods shipped in an enemy's country would be protected by transfers which it would be impossible to detect. It is on that principle held, I believe, as a general rule, that property cannot be converted in transitu, and in that sense I recognize it as the rule of this court. But this arises, as I have said, out of a state of war, which creates new rights in other parties, and cannot be applied to transactions originating, like this, in a time of peace.

In the work of Mr. Justice Story on *The Principles and Practice of Prize Courts*, that celebrated jurist states the rule in the following passage (Pratt's Story, pp. 64-65):

In respect to the proprietary interests in cargoes, though, in general, the rules of the common law apply, yet there are many peculiar principles of prize law to be considered; it is a general rule that, during hostilities, or imminent and impending danger of hostilities, the property of parties belligerent cannot change its national character during the voyage, or, as it is commonly expressed, in transitu. This rule equally applies to ships and cargoes; and it is so inflexible that it is not relaxed, even in owners who become subjects by capitulation after the shipment and before the capture. * * * The same distinction is applied to purchases made by neutrals of property in transitu, if purchased during a state of war, existing or imminent and impending danger of war, the contract is held invalid, and the property is deemed to continue as it was at the time of shipment until the actual delivery. It is otherwise, however, if a contract be made during a state of peace, and without contemplation of war; for, under such circumstances, the prize courts will recognize the contract and enforce the title acquired under it. * * * The reason why courts of admiralty have established this rule as to transfers in transitu during a state of war or expected war is asserted to be, that if such a rule did not exist, all goods shipped in the enemy's country would be protected by transfers, which it would be impossible to detect.

Lastly, in *The Baltica* (11 Moo. P. C., 141), in the judgment of the Lords of the Privy Council sitting to hear appeals in prize, Lord Kingsdown (then Mr. Pemberton Leigh) deals with the rule as applicable to ships and goods in the following passages:

The general rule is open to no doubt. A neutral while a war is imminent, or after it has commenced, is at liberty to purchase either goods or ships (not being ships of war) from either belligerent, and the purchase is valid, whether the subject of it be lying in a neutral port or in an enemy's port. During a time of peace, without prospect of war, any transfer which is sufficient to transfer the property between the vendor and vendee is good also against a captor if war afterwards unexpectedly break out. But, in case of war, either actual or imminent, this rule is subject to qualification, and it is settled that in such case a mere transfer by documents which would be sufficient to bind the parties is not sufficient to change the property as against captors as long as the ship or goods remain in transitu.

With respect to these principles, their Lordships are not aware that it is possible to raise any controversy; they are the familiar rules of the English prize courts, established by all the authorities, and are collected and stated, principally from the decisions of Lord Stowell, by Mr. Justice Story, in his "Notes on the Principles and Practice of Prize Courts," a work which has been selected by the British Government for the use of its naval officers as the best code of instruction in the prize law. The passages referred to are to be found on pp. 63, 64 of that work.

In order to determine the question it is necessary to consider upon what principle the rule rests, and why it is that a sale which would be perfectly good if made while the property was in a neutral port, or while it was in an enemy's port is ineffectual if made while the ship is on her voyage from one port to the other. There seem to be but two possible grounds of distinction. The one is, that while the ship is on the seas, the title of the vendee cannot be completed by actual delivery of the vessel or goods; the other is, that the ship and goods, having incurred the risk of capture by putting to sea, shall not be permitted to defeat the inchoate right of capture by the belligerent Powers, until the voyage is at an end.

The former, however, appears to be the true ground on which the rule rests. Such transactions during war, or in contemplation of war, are so likely to be merely colorable, to be set up for the purpose of misleading or defrauding captors, the difficulty of detecting such frauds, if mere paper transfers are held sufficient, is so great that the courts have laid down as a general rule that such transfers, without actual delivery, shall be insufficient; that in order to defeat the captors the possession as well as the property must be changed before the seizure. It is true, that in one sense, the ship and goods may be said to be in transitu till they have reached their original port of destination; but their Lordships have found no case where the transfer was held to be inoperative after the actual delivery of the property to the owner.

It might be argued that according to these authorities transfers in transitu are invalid against belligerent captors upon the intervention of war unless there is actual delivery before capture; or, in other words, that if war has intervened no transfer by documents alone can defeat

the right of capture. But in my opinion that proposition is too wide, and is not an accurate delimitation of the true rule. In the passages cited Lord Stowell speaks of "a state of war existing or imminent"; Mr. Justice Story of "a state of peace, without contemplation of war," and of "a state of war existing or imminent, and impending danger of war"; and Lord Kingsdown of "war, either actual or imminent," of "war unexpectedly breaking out" (contrasting it with "a time of peace, without prospect of war"), and of "transactions during war or in contemplation of war."

It is important to note the reasons for the rule which are elaborated by Lord Kingsdown thus:

Such transactions during war, or in contemplation of war, are so likely to be merely colorable, to be set up for the purpose of misleading or defrauding captors, the difficulty of detecting such frauds, if mere paper transfers are held sufficient, is so great that the courts have laid down as a general rule that such transfers, without actual delivery, shall be insufficient; that in order to defeat the captors the possession as well as the property must be changed before the seizure.

In my view the elèment that the vendor contemplated war, and had the design to make the transfer in order to secure himself and to attempt to defeat the rights of belligerent captors, is necessarily involved in the rule which invalidates such transfers. Sales of goods upon ships afloat are now of such common occurrence in commerce that it would be too harsh a rule to treat such transfers as invalid unless such an element existed.

I have been considering the rule in its application to the sale or transfer of goods, but it is well to note that special and highly artificial rules as to the transfer of vessels during or preceding a state of war are now laid down in the Declaration of London of 1909—as agreed to by the representatives of the Powers and as applied by the Orders in Council in this country. But these do not apply to goods or merchandise.

As to the facts in these two cases, it is abundantly clear that the neutral purchasers acted with complete bona fides throughout: they paid for the goods, and resold them to neutral customers of their own before war was declared. This would not necessarily conclude the matter. But I am also satisfied that the vendors did not have the war between their country and this country (to which the ship carrying the goods belonged) in contemplation when they sold the goods. The imminence of war between Germany and Russia has no materiality in considering these cases. In the light of after events the war with this country may

be spoken of as having been imminent, regarded from the point of view of time, in the last two weeks of July; but there is no evidence that it was regarded as imminent in its proper meaning of "threatening or about to occur" by them at that time; not only so, but I find after investigation in various directions, and on grounds which I deem satisfactory, that it was not in fact so regarded by them. What the hidden anticipation of the Government of the German Empire might have been upon the subject, it is not for me to speculate; but I may express my humble opinion that our intervention in the war upon the invasion of Belgium in defence of treaty obligations against the breach of such obligations by the invaders was a complete surprise even to their government.

Documents and facts which throw light upon the history of the days I have been dealing with between July 24 and August 4, 1914, are, I think, admirably collected and stated in a work called *The History of Twelve Days*, by Mr. J. W. Headlam.

On the grounds that the German vendors had no thought of the imminence of war between Germany and this country, and did not have such a war in contemplation at any time while the transactions of sale were taking place or before they were completed, I hold that the sales to the two Dutch merchants were valid and that the goods were not confiscable. And I decree the release to them respectively of the net proceeds of the sale of their respective goods, which are now in court.

The Relation of International Law to States of America. By Cyril by L. Oppenheim, LL.D. New pp. 128.

This is a university essay,—the presented by a Whewell Scholar in It is printed in handsome form, and that international law is not, in any mon law of England, but merely a Mansfield's often cited remark in I tially qualified by Lord Alverstone's Mining Co. v. The King ² (p. 102).

Since the middle of the last cer courts have regarded international I do not take judicial notice. If relimust be proved to exist, in the form merely of an historical character, bu of authority (pp. 90, 121). The aution, as to the real nature of internatit as a body of moral rules; the Posit life of the civilized nations which acction, however, he does not underta tween the two schools first menticompletely taken the place of the N

In the introduction to the volun claim made by some Continental prudence that "international law law" (p. 9). On the contrary, he w of the tree of law: one derived froments; the other from local customs law of a country cannot be judic

¹ 1764, 3 Burr., 1478.

² 1905, 2 K. B., 391.

stablished by international law, which has not been at least tacitly dopted by such municipal law (p. 10). He deduces from our rule that n Act of Congress can repeal a treaty provision, the corollary that nternational law and municipal law are with us of equal force (p. 122). s this true of the States? Can a State legislature assume to repeal a principle of international law? And when Congress abrogates a treaty provision, does it thereby detract from the authority of international aw? It has simply broken a bargain and made a precedent which may be of importance in future modifications or definitions of that law. It is worth remembering that the Federal Court of Prize Appeals, as early as 1781, held that the municipal laws of a country cannot change the law of nations so as to bind the subjects of another nation.

Reference is made to the fact that after Jay's treaty removing the disabilities of aliens as to holding real estate, England had to pass a statute in confirmation. The United States did not. "This difference might seem to imply that the rule of international law requiring that treaties shall be observed was incorporated in the law of the United States though not with that of England. But it is not so. The difference is merely that the Executive possesses in the United States a power of making law by treaty not paralleled in England" (pp. 60, 116). But the President of the United States simply initiates treaties. They have no legal force whatever until ratified by and with the advice and consent of the Senate. He stands here just where, according to Maitland, the King of England stands (p. 62).

Whether international law be binding in England, or not, on national legislatures, treaties are on prize courts, and a very recent decision of the Court of Appeal is cited accepting that position as to the Hague Convention of 1907 on the laws and customs of land warfare (pp. 73, 125).

Sir William Scott is frankly criticised for his well-known statement, in the case of the Fox, in 1811, that a British prize court is bound to administer the law of nations, and bound equally to enforce Orders in Council, because they are presumed to conform to that law. It is challenged as "erecting a violent presumption" of harmony by "a pure legal fiction" (p. 35). The proper rule for a prize court in case of such a conflict, in Mr. Picciotto's view, would seem to be that there is no power inherent in the royal prerogative to legislate for it, so as to debar it from executing the precepts of international law as to prize

3 Miller v. The Resolution, 2 Dall., 1, 4.

cases (p. 47). That is only for Parliament (p. 50), and to Parliament, in such a case, the court must bow (p. 54). As to this point, he seems rather to overstrain the meaning of Marshall's observation, in Murray v. The Charming Betsey, that an Act of Congress "can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations, as understood in this country" (p. 119). This is explained by the preceding statement of the Chief Justice, in the same sentence, that such an Act ought never to be construed to violate the law of nations "if any other possible construction remains."

In regard to a British Order in Council affecting the rules of decision in prize cases, the author goes no farther than to say that, being only an exercise of a royal prerogative, it would "seem" as such to have a field narrower than that of an Act of Parliament (p. 47).

The assent of Parliament is regarded as practically necessary to secure the enforcement of any treaty in the ordinary courts (pp. 94, n. 107, 125).

The author recognizes three divisions of international law,—that which is assented to by all nations, that which is assented to by an important part of them, and that which has been assented to by a small number only (p. 16). It may well be questioned whether the second and third classes are inherently law at all. They seem rather law in the making.

SIMEON E. BALDWIN.

Diplomatic Protection of Citizens Abroad: or the Law of International Claims. By Edwin M. Borchard. New York. The Banks Law Publishing Company. 1915. pp. xxxvii, 988.

As but few books have been heretofore written upon the subject matter covered by the work under review, it is but scanty praise to say that this is the best of them.

In standardizing any American book on any branch of international law, one instinctively turns to the incomparable works of Mr. John Bassett Moore,—the Digest of International Law and the History of International Arbitrations,—which constitute at once the most elaborate and able treatises which America has produced upon international law and also the original sources of a great bulk of material, the actual

original papers of which are beyond the reach of the ordinary private citizen. However, Mr. Moore, in his Digest, covered the entire field of international law and he would have been unscientific and would have gone beyond the purpose and scope of his work, had he attempted to deal with the minutiæ of international claims.

In his International Arbitrations, Mr. Moore evidently aimed not so much at preparing a general treatise on international claims, as at producing a work that should make available the otherwise inaccessible records of international arbitrations, particularly those to which the United States has been a party. Of necessity this purpose so limited the scope of the work as to put out of view a consideration of the diplomatic adjustment and settlement of claims save as these matters might be incidental to particular cases which were ultimately arbitrated. There have moreover been a number of important arbitrations since the work was prepared.

The report of Mr. Lawrence "The Law of Claims Against Governments, including the mode of adjusting them and the procedure adopted in their investigation" contains material that is valuable, but it was written with a particular purpose in mind, and it is no more than the usual government document,—a heterogeneous, unclassified mass of material.

Mr. Ralston has given us a comparatively small but well conceived and written Résumé (as he terms it) of International Arbitral Law and Procedure, but this obviously deals with only one phase of international claims. Our present author has undertaken the larger and more ambitious task of covering the whole field of international claims. In his work and that of Mr. Ralston, is to be found certainly the greater part of the law and existing precedents and authorities relating to this particular branch of the law of nations. The two works are more or less complementary, the one to the other.

The most cursory examination of the work under review demonstrates the immense amount of labor which its author performed in its preparation, and even a partial reading of the text brings the assurance that the matter has been carefully and thoughtfully treated.

The work is divided into four parts and each part is separately and independently divided into chapters. Part I deals with the "Relation Between State and Citizen, Between State and Alien, and Between State and State," and the various chapters thereunder are "The Alien"; "Municipal Responsibility of the State"; "International Responsi-

bility of the State"; (generally and as to the" Claims," "Contractual Claims," and "Denie tion between States." Part II deals with " Protection" and is divided into chapters de and Theory of Protection"; "Relation bet Public Injury"; "Government Control over of Awards and Indemnities"; "Extent of Pi Protection." Part III covers "The Object and Property of Citizens" under the chapt Primary Title to Protection;" "Proof and "Naturalization and Other Titles to Citizens of Various Legal Relationships"; "Successor Owners." Part IV, dealing with the "Limi tection" has for its chapter headings "Cor Claimant's Own Government"; "Forfeiture Citizen (including "Expatriation," "Censura ant," "Renunciation of Protection," and "I to Judicial Remedies"); "Limitations Arisi and Political Considerations"; and "Limitati pal Legislation of the Defendant State."

It will be thus observed that the book cover method of treatment is a discussion of principal of conclusions, all supplemented and enforce authorities (cases and treatises). The book treatise, but also a mine of material, both national law and the lawyer practicing in the

Of course, no international lawyer, even to regard the book as perfect, and every law done some part of the work in a different vesome of the various subjects from a different times, with a different fundamental theory.

For example, the author, supported by no a quite positive distinction (p. 283) between the paying of money for money furnished to tracts for the paying of money for goods fur—he considering the latter enforceable, the i true of Anglo-Saxon law, and probably of o distinction is to be taken between a man's money which he has received and his promis

which he has received. Indeed, such a distinction would be not only artificial, but one might properly say foolish. It is not clear why on principle any different rule should apply to the transactions of a government. Our author seemingly relies largely on Westlake for the support of his theory, and Westlake appears to put his case upon the following grounds:

But public loans are contracted by acts of a legislative nature, and when their terms are afterwards modified to the disadvantage of the bondholders this is done by other acts of a legislative nature, which are not questionable by any proceeding in the country. * * * The holder of a bond enforceable only through the intervention of his government is trying, when he seeks that intervention, to exercise a different right from that of a person whose complaint is the gross defect of a remedial process which by general understanding ought to exist and be effective. (Westlake, 2nd Ed., Part I, 332, 333.)

Or to put it more shortly, according to this theory obligations for public debt seemingly are not to be enforced, (1) because the creation thereof is a legislative act and the legislature may without challenge modify its act; and (2) because no local remedy is generally provided.

As to the first of these points it is submitted that it cannot be supported either legally or morally, except upon the assumption that the public loan contract is made with the distinct understanding upon the part of both borrower and lender that the legislature may rightfully change its mind and repudiate its obligations. Of course, this is not the fact, as our author evidently recognizes (p. 304). Moreover, if this legislative theory is sound, it should, it would seem, be operative as to all like legislative acts; yet curiously enough our author holds that government concessions, which are also practically always legislative acts either directly or through authorization to the Executive and which are therefore susceptible of the same sort of legislative modification, are not subject to the same rule of repudiation but are enforceable.

As to the second of the grounds noted, it is hardly to be contended that the mere absence of a local legal remedy can in international affairs be regarded as nugatory of the existence of international rights, otherwise an evilly disposed government might treat aliens according to its mere caprice. Moreover, it seems that in his treatment of this particular subject the author is more or less at war with himself, for he has in an earlier part of the work (p. 184) insisted that "the taking of private property for the public use or benefit has always been an accepted ground of international claim for compensation"; and further (p. 262) that this

is the law even in cases of military necessity,—probably the most dire necessity known to nations,—certainly a necessity as great as ever induces the repudiation of a debt. It seems doubtful whether anyone could successfully maintain that the repudiation of an honest debt, whether evidenced by a bond or by some other security, and whether for money borrowed or for goods sold, is not in essence an appropriation of private property to public use. As Vattel puts it, the creditor "has entrusted the nation with his property, and the nation is bound to restore it to him again." (Book II, Chap. XIV, Sec. 216.)

It is submitted that the sounder doctrine is laid down by Hall when he says "there is no difference in principle between wrongs inflicted by breach of a monetary agreement and other wrongs for which the state, as itself the wrong-doer, is immediately responsible." (Hall, 6th ed., pp. 275–276.)

Of course, as already stated, there are authorities opposed to Hall (and in support of our author), but they have come in considerable part from the smaller states, and not infrequently from that class of states whose public debt history, marred by all too frequent occasions of repudiation, is needy both of excuse and justification.

It is at times sought to buttress the position adopted by our author by invoking Lord Palmerston's declaration in his famous circular of 1848. As a matter of fact Lord Palmerston's circular merely again laid down the rule which had been enunciated by the British Foreign Office certainly as early as 1830 (28 British and Foreign State Papers, p. 967) and reiterated in 1832 (*id.* 969). [And see also the early correspondence on the Rights of bondholders as early as 1828 (*id.* 978); and in 1829 (*id.* 981) and again in 1832 (*id.* 1012)].

Moreover, as our author points out, the essential parts of Lord Palmerston's comments on the principles involved are oftentimes overlooked in considering this circular. The circular says:

As some misconception appears to exist in some of those states with regard to the just right of Her Majesty's Government to interfere authoritatively, if it should think fit to do so in support of those claims, I have to inform you, as the representative of Her Majesty in one of the states against which British subjects have such claims, that it is for the British Government entirely a question of discretion, and by no means a question of international right, whether they should or should not make this matter the subject of diplomatic negotiation. If the question is to be considered simply in its bearing on international right, there can be no doubt whatever of the perfect right which the government of every country possesses to take up, as a matter of diplomatic negotiation, any well-founded complaint which any of its subjects may prefer against

the government of another country, or any wrong which from such foreign government those subjects may have sustained; and if the government of one country is entitled to demand redress for any one individual among its subjects who may have a just but unsatisfied pecuniary claim upon the government of another country, the right so to require redress cannot be diminished merely because the extent of the wrong is increased, and because instead of their being one individual claiming a comparatively small sum, there are a great number of individuals to whom a very large amount is due. (Hall, 6th ed., p. 276.)

At the close of his circular he said:

But nevertheless it might happen that the loss occasioned to British subjects by the non-payment of interest upon loans made by them to foreign governments might become so great that it would be too high a price for the nation to pay for such a warning as to the future, and in such a state of things it might become the duty of the British Government to make these matters the subject of diplomatic negotiation. (Hall, 6th ed., p. 277.)

The real position of his lordship was set forth in the paragraph of his circular which reads:

It is therefore simply a question of discretion with the British Government whether this matter should or should not be taken up by diplomatic negotiation, and the decision of that question of discretion turns entirely upon British and domestic considerations. (Id., p. 276.)

(It may be remarked, parenthetically, that the espousal of any claim of any kind by one government against another government and on behalf of its own nationals, is always a matter of purest discretion.)

Moreover, according to the statement of Lord Palmerston (see the initial paragraph of his circular as quoted by Hall and Phillimore, II, p. 9) the British Foreign Office had theretofore repeatedly interposed its efforts with foreign governments in behalf of British subjects who had lent money to those governments. Indeed, in the last forty years there have been perhaps half a hundred occasions in which Great Britain has instructed its diplomatic and consular officers to interpose their efforts in behalf of British bondholders of the external debts of states, and in not a few of these cases the officers so instructed to give assistance have also been at the same time the regularly appointed agents of the bondholders in the countries to which they were commissioned or accredited. (See for example, II Phillimore, p. 13.) Under these circumstances it is not difficult to understand how, not only the foreign state but even the diplomatic representative himself might at times have confused his two capacities, with a resulting benefit to the bondholders,—a benefit entirely

consistent with Lord Palmerston's pronouncement, but not wholly in keeping with that more virtuous self-restraint which some have understood his circular to command.

Again, as a purely minor matter, one misses from our author's citations of bond cases some of the British decisions of the seventies and eighties dealing with the bond issues of Bolivia, Peru, and Egypt, as also the litigation before our own Supreme Court in the matter of certain "Southern Bonds," which latter sufficiently resemble the external obligations of a sovereign state to be useful in a general consideration of public bonds.

It is somewhat curious to note that our author, espousing a view held by certain other writers, seems inclined to treat the general question of paying public bonds as if somehow it were a great injustice for states to meet their external debts, and further as if considering that primarily the effort in international law should be to provide some means by which nations might, perhaps within limitations, safely and securely defeat the demands of their creditors. For example, he begins the "Conclusions" of his discussions on public debts with these sentences: "The Porter proposition is by no means a complete remedy for existing evils, except in so far as it protects a debtor state from the *immediate* use of force. It still permits of much injustice to the debtor nation, inasmuch as claims are still presented on ex parte evidence without a judicial examination of the merits of the case" (p. 327).

One cannot avoid the enquiry which immediately comes into the mind,—what evils, and what injustice?

It would be an interesting and instructive work for someone to furnish us a list of the cases in which governments have used force actually to collect, out of hand, without adjustment or consideration, public debts due their nationals. If it should be found on examination that such occasions of "injustice" had not been numerous, and, particularly, if it were found that no state had, as a matter of fact, ever used force so to collect a public debt, this sovereignty-destroying spectre of force opposing the repudiation of duly contracted obligations would lose much of its power to terrify. It might be that such an examination would further show that the proposition of Mr. Porter was, as some have considered it to be, both the first and the only sanction, recognized or even conceded, to the use of force in such cases. (It is assumed that measures of reprisal are not considered "force" as used in this connection.) It has, of course, been necessary in the past (and the proposal of Mr.

Porter quite clearly contemplates that it may be necessary in the future) for one nation to use force against another to compel the other to enter upon an adjustment of claims, even including, in some cases, public debts. For example, of such general nature were the operations of Great Britain in the much condemned Don Pacifico case (VI, Moore's Digest, p. 852; VII, id., p. 132), probably as extreme an action of this sort as any government has ever taken, and of the allied Powers in the "pacific blockade" of Venezuela in 1902 (VI, Moore's Digest, p. 586).

Mr. Porter does not give the final outcome of the nameless nineteen-war-ship American case, cited by him in his speech presenting his proposal to the Hague Conference, but it is reasonably safe to assume that this Government did not in that case use, and indeed has never yet used in any case, force to collect any contract claim without a reasonable adjustment, though it may have used a show of force to compel another country to enter upon an adjustment of contract claims, by arbitration or otherwise. And it is certainly safe to assert that force has never been used by the United States to collect from any foreign government the proceeds of bonds of its public debts.

Indeed, it is believed that, as a matter of fact, this particular sort of "injustice" against weak nations is almost conspicuous by its absence.

As to the actual "injustice" which has as a matter of fact been meted out by the strong nations against the weak nations in this matter of public debts, it is to be observed that the history of the states which have been most flagrant in repudiating their debts does not furnish us with instances in which the defaulting governments have been subjected to force or even to excessive diplomatic pressure in order to dissuade them from their course; and yet that same history is filled with repudiations of just debts; of appropriations of revenues allocated to the service of those debts; of the arbitrary reductions of such debts, principal and interest; and of almost every conceivable interference with the service of such debts.

Moreover, why advance a doctrine which puts a premium on unreliability? Why should a nation which has repudiated its obligations till it no longer possesses any credit be regarded as relieved from the necessity of living up to its obligations, merely because they are more onerous than those asked of a reliable government? Why should even compelling such a defaulting nation to observe its voluntary agreements be regarded as "injustice"?

Notwithstanding these facts, our author's treatment of the question

of bonds of the public debt of governments is quite easily the most comprehensive and best legal discussion accessible to the general reader, and if one looks at the whole field, all of these matters noted above become more or less unimportant, and they in nowise impair the really great value of the work to the student and practitioner of international law. The book is a monument to the industry, patience, and thoughtfulness of its author.

The conventional law book statement, that no law library is complete without the book, is in this case a simple truth.

J. REUBEN CLARK, JR.

Las Doctrinas Guerreras y El Derecho. By Dr. Juan Liscano. Caracas: El Cojo. 1915. pp. 225.

The European war has led the author to publish the work. In general, it may be described as an anti-German book, written for the purpose of showing what the author considers to be the impossibility of the position of Germany in its internal and external policies. He says that the present war is a fight to the death between warlike doctrines and the philosophy of law, and that war brings us toward barbarism, the ancestral state. He criticises the German doctrine that war is the essential form of the state, and considers that the great error of Germany consists in its believing that moral principles and the respect for treaties are worth nothing if they retard military operations. The destruction of monuments, buildings, and paintings is of no importance if that destruction assists Germany in being victorious.

The author takes occasion to praise England, France, and Italy, the principles they have stood for, and their gifts to the world. He believes that all Germany has given us and all she desires to give us is merchandise and industrial products, and that German culture consists in seeking markets for German products and colonies for the German people. The victory of the Allies would perpetuate the influence of each Ally, while a German victory would mean a Germanized Europe.

The author wishes Germany to live, but to live for liberty and democracy. He considers that a military Germany is a danger for humanity, and that a pacificist Germany is a guaranty of progress. He concludes that the future work of civilization is to "de-Prussianize" Germany.

Criticism is, also, made of Ex-President Roosevelt, whom the author refers to as the American Kaiser, and of what he considers to be his military and warlike policies.

The book is principally interesting in showing the attitude of the Latin American legal mind toward the present war and in disclosing its sympathy for the Allies. It is written in an attractive style, and is well worth reading.

WALTER SCOTT PENFIELD.

Economic Aspects of the War. By Edwin J. Clapp. New Haven: The Yale University Press, 1915. pp. 340. \$1.50 net post paid.

The scope of Professor Clapp's book is far narrower than its title suggests. What Professor Clapp sets out to do is to treat, not as a lawyer but as an economist, the consequences of the progressive invasions of traditional neutral rights in the course of the European war. These invasions are matter of general knowledge, and the author's account of them serves chiefly to focus attention by assembling them in all their multiplicity. Both parties to the war have participated in the unlawful work. The sowing of mines on the open sea, the war zone declaration and the ruthless employment of submarines constitute the chief encroachment by the Central Powers upon neutral rights on the high The encroachments of the Allies make a longer list, naturally, in view of their superior ability of sea power to interfere with commerce. The extraordinary expansion of the list of absolute contraband, to include such articles of general industrial use as copper and rubber. the practical elimination of the distinction between civil and military use in the case of food supplies, the arbitrary imposition of embargoes against Germany upon Holland and Scandinavia, the irregular blockade of Germany under the various Orders in Council, make up an imposing array of grievances.

It is impossible to read Professor Clapp's indictment without gaining the impression that international law has been worked to the whim of the belligerent and to the prejudice of the neutral. It must, however, be said that one hesitates to accept Professor Clapp's case against the belligerents at par value. International law is a developing body of principles, and it would be unprecedented if no change in it occurred in the course of a great war involving the chief part of the civilized world. There is such a thing as progressive development, as well as reaction toward barbarism and lawlessness. To determine whether a particular change, as, for example, the extension of the contraband list, is in the line of progress or is fundamentally reactionary, requires the resources

of the best trained international lawyer. The conclusions of even so well informed a layman as Professor Clapp must be treated as tentative.

There is no reason for a similar qualification of Professor Clapp's conclusions as to the economic effects of belligerent restrictions upon trade. The British policy with respect to cotton did unquestionably inflict serious loss upon American producers of this staple. The same thing is true of the annihilation of American trade in copper with the Central Powers. The arbitrary character of British policy, in the matter of shipments officially regarded as lawful in the early months of the war, entailed serious losses, through delay and indefinable, non-insurable risks. The holding up in neutral ports of German exports to the United States inflicted serious losses upon our importers. And in many cases it would have been difficult to defend these interferences with trade on the ground of military necessity.

Professor Clapp rejects utterly the doctrine that the war can be won through "economic pressure." Germany cannot be starved. She will not be crippled through lack of copper and cotton for munitions. So provident a military organization as that of Germany has long since assured itself of sufficient provision of these staples; and besides, German science is quite capable of providing satisfactory substitutes. This estimate of the situation, which was violently disputed at the time when Professor Clapp's book first appeared, would probably now be accepted by most careful students of the economics of the war. As an immediately effective military measure, economic pressure is a failure.

This does not mean, however, that it may not be entirely rational for the Allies to continue their restrictions upon trade with Germany and even make them more stringent. It is good military policy to seize everything possible, material or immaterial, that is of ultimate advantage to the enemy, in order to have a broad basis for peace negotiations. The right to convey goods over the seas is one that the Central Powers must recover through the peace negotiations, at a price, if their opponents shall have succeeded in depriving them of it utterly. But while it is rational for the Allies to proceed ruthlessly to their goal of holding the seas, it may not be rational for neutrals to submit to a policy that prejudices their interests equally with those of the Central Powers. Professor Clapp would have the neutrals assume an energetic stand in the matter, and if diplomatic representations do not suffice, he urges an embargo upon exports essential to the Allies.

ALVIN S. JOHNSON.

El Protocolo Venezolano-Francés de 1913. Ezequiel A. Vivas. Lit. Y Tip. Del Comercio; Caracas. 1915. pp. 743.

It will be remembered that in 1903, through conventions with ten several Powers (there being also a convention of 1902 with France), all claims on the part of foreign citizens and countries against Venezuela were brought to a determination. The awards given under the several conventions have since been paid. After the termination of the work of the several commissions, new difficulties arose between France and Venezuela, as a result of which diplomatic relations between the two countries were broken off, and remained in this condition until the signing of a new convention between the countries in 1913. The greater portion of the volume before us is devoted to the history and work of this convention. We are furnished with the various documents relating thereto, and an account of the debates in the Venezuelan Congress, as well as numerous commentaries upon the resumption of relations between the two countries.

Incident to the resumption of diplomatic relations, came under the new treaty arrangements the settlement of about forty claims, involving a number of interesting but not difficult questions, a short history of each of which is given.

Among the cases determined, we find one rejected for cattle taken by the national forces, but not proven to have been so taken before June 30, 1903, the date to which former protocols ran; a claim rejected for damages to business said to have been caused by the arbitrary order of a civil chief, but where it appeared that the merchant had not taken out a license permitting him to exercise freely his business; a large number of claims rejected based upon damages caused by revolutionary authorities which controlled in Ciudad Bolivar until July, 1903, it being held that the nation was not responsible for damages caused by revolutionary agents; the claim of a Venezuelan woman who, marrying a Frenchman, assumed French citizenship, but becoming a widow, held to have reacquired her first nationality, so that she had no right to present any claim against the Venezuelan Government; a large number of claims rejected for aid given revolutionaries and damages suffered from bombardments and pillages incident to a combat, no such damages being permitted to be exacted from the constitutional government; a claim for damages rejected on the part of widow and sons who were Venezuelans by birth, although she had acquired French citizenship by marriage, her husband having died before the signing of the protocol; claims rejected because claimants lost their positions as foreigners on account of acceptance of public offices, and having taken arms in the civil wars; a claim accepted as good for an attempt on the part of the Ministry of Fomento to cancel a mining concession without right; a claim rejected because the claimant, who complained of being unjustly imprisoned, had not availed himself of legal remedies against the persons responsible for damages inflicted upon him, and claim for damages sustained for expulsion and arbitrary imprisonment.

About half of the book is devoted to congratulations and eulogistic commentaries upon the success attendant on the execution of the protocol, matters which, however pleasing to those concerned, cannot be considered as possessing much historical value. The various protocols and proceedings thereunder determining claims against Venezuela, which from time to time have been called into existence, is contained in this volume.

Jackson H. Ralston.

Germany of To-day. By George Stuart Fullerton, Ph.D., LL.D., Professor in Columbia University, New York. Honorary Professor in the University of Vienna. First American exchange Professor to Austria. Indianapolis: The Bobbs-Merrill Company. 1915. pp. 181. \$1.00.

Professor Fullerton's stimulating and interesting book is inscribed "to those who desire a mutual understanding among civilized nations and to work for the cause of international conciliation." His purpose as stated in his preface is "to present in brief outline a sketch which will give a just conception of the political and social constitution of the German nation and of the spirit with which it is penetrated."

In accomplishing this purpose he has sought in the first place to make an accurate statement of the essential political and social facts with regard to the German Empire and the German states with special chapters dealing with "militarism" and "imperialism" and a concluding chapter of reflections and prophecy.

It is believed that there will be little disposition to quarrel with Professor Fullerton's statement of facts. His facts are not only accurate in themselves but they are in general well chosen and stated in a concise and lucid way, except that perhaps he might have devoted more attention to Prussia and less to Bavaria from which latter state, probably on account of his residence in Munich, his illustrations are frequently taken.

The author brings out very strikingly and successfully that while the Government of Germany is not what the average American would consider of the people or by the people, it is "most emphatically a government for the people," (p. 36) and one from which our democracy has a very great deal to learn. But query whether or not when this is said it ought not to be also added that the same thing was true, in greater or lesser degree, of the Government of Marcus Aurelius or Napoleon or any other benevolent or "near" benevolent despot. The true glory of democracy is not that it develops material well-being, but that it develops character; not that it makes good roads, but that it makes good men. But Professor Fullerton's book is for Americans and not for Germans and perhaps he will write a complimentary book on American institutions for Germans which will cover the obverse side of the shield.

Particularly valuable is the excellent description, in chapter three, of Germany's chief glory, the German school system. In the course of this discussion the author does not neglect fairly to raise the important question which obtrudes itself in the mind of an American familiar with the excellence of the German system of education, namely, the question whether or not the scholar "suffers in independence of character, in capacity for taking the initiative, in efficiency?" (p. 81). One could wish, however, that this question had been answered in more detail. Professor Fullerton concedes that the "young American impresses one as being, in practical matters, at least, a more independent man than the average young German" but he leaves open the question "whether this does or does not add to his efficiency as a member of the state." It is submitted that after all it is not so important whether or not independence adds to the student's efficiency "as a member of the state," i. e., as a member of a great machine, as whether it adds to his efficiency as a member of the human family with an immortal soul. This latter question, it is conceived, is not satisfactorily answered merely by reference either to Germany's "extraordinary development" in peace or to "what the Germans have done on land and sea since August 1914."

Professor Fullerton cheerfully excuses all who will read his facts from paying any attention to his expressions of opinion, but anyone who has once dipped into his interesting book will not fail to read the last, and in many ways the most informing chapter,—informing because it gives persuasively but frankly the author's point of view in the light of which the entire book must be read. Herein he considers the doctrines of the

status quo, the balance of power and the question of "the freedom of the seas." His attitude may be fairly gathered from the following detached excerpts: "He who has been well off or is well off is no friend to innovations" (p. 157). "What on the whole has been the attitude of the Americans towards the status quo? Did we accept the status quo when we dispossessed the Indians? Did we bow down before the principle when we published our Declaration of Independence in 1776?" (p. 158). "The rise of Germany has been as natural and as inevitable as that of our own country" (p. 159). "Such a development—it is a development wholly in the interests of civilization—has unavoidably disturbed the balance of power in Europe" (p. 160).

"The status quo makes for peace, but, if conditions change beyond a certain point, the peace may reveal itself as a frozen immobility which nations with life in them will reject as intolerable" (pp. 161-162). The author then discusses the growth of England's colonial empire and naval supremacy by conquest and forcible annexation, and the question of the "freedom of the seas," reaching the conclusion that "so long as the seas are under the dominant control of any one nation" the other strong nations "must feel that the great public highways of the world may at any time be closed to them." This, he says, "by weaker nations, will be felt to be intolerable, and, by strong nations, will not, in the long run, be tolerated" (pp. 169-70). The author insists that it is not a question of "substituting a dominant control by one nation for that exercised before by another. It is a question of genuine internationalization" (p. 170). Besides the freedom of the seas, Professor Fullerton looks forward in the future, perhaps the remote future, to "a new conception of colonies in general" (p. 174).

The author does not go into detail as to the causes of the war except to reject as trivial and inadequate those ordinarily suggested. He evidently regards the war as the result of the readjustment of national values consequent upon the tremendous development of the German nation in the last half century; such a readjustment as it ought to be possible to make peaceably but which in any event must be made. That Germany "can be permanently relegated to the position of a second class Power, under the dictation of some other nation or group of nations," he regards, "as wholly inconceivable."

"Something else will have to be done with Germany. If the ancient privileges of some other nation stand in the way of the natural and wholesome growth of the German nation such ancient privileges will have to be curtailed and some compromise arrived at" (p. 177). In other words, if England insists on retaining her naval supremacy and her colonial empire as they exist to-day, she must fight for them. While pointing the way to the new dispensation the author evidently thinks that until there has been a redress of grievances the law of the jungle must obtain "the good old plan, that they shall keep who have the power and they shall take who can"; and although the author appeals to Germany not to use the victory, which he evidently anticipates for her, either in the present war or later, like a giant but to use it for the benefit of mankind, the reader cannot but reflect that that is not the way that victories won under the law of the jungle have ordinarily been used in the past.

Although the author does not say so, the reflection naturally suggests itself, that the Monroe Doctrine is another "ancient privilege" which if Germany is victorious must either be "curtailed" or fought for. Let us hope that before the day comes when this question must be thrashed out, some such cosmopolitan basis of adjustment, as Professor Fullerton hopes for, may have been found, for, as he truly says in concluding his book, "The civilized world should be one and united. It is now not one and united. In bringing about the union of the future upon a reasonable basis the lead will have to be taken by the strong."

Every page shows Professor Fullerton's effort to be scrupulously fair and he has done a real service at a time like the present in drawing a concise and illuminating picture of German institutions which, it is believed, will be generally accepted as to its facts both by those who admire and those who distrust them. For those who feel the need of an anti-dote as to certain matters of interpretation, the writer ventures to recommend Owen Wister's "The Pentecost of Calamity."

WILLIAM CULLEN DENNIS.

El Derecho Publico Internacional y La Guerra. By Dr. Fed. Henriquez y Carvajal. 1915. pp. 40.

This is an address delivered by the President of the Supreme Court of Justice of the Dominican Republic before the Professional Institute of Santo Domingo. The author speaks particularly on the subjects of blockade, bombardment, and neutral states. He discusses England's action not only in blockading German ports, but, also, her domination to a considerable extent of the Baltic, the declaration of a maritime zone of war by Germany and Great Britain, as well as submarine warfare.

The author says that the rights and guaranties of neutrals have suffered to such an extent that they are almost annulled. Transatlantic ships, messengers of peace and progress, have been torpedoed, without their having time to know from whence death came. The violation of the neutrality of Belgium by Germany is considered to be one of the greatest crimes committed.

The booklet is written in an attractive style, and is especially interesting reading on account of its showing the views of a distinguished Dominican jurist on some of the legal aspects of the present war.

WALTER SCOTT PENFIELD.

The Prisoners of War Information Bureau in London. By Ronald F. Roxburgh. With an introduction by L. Oppenheim. London: Longmans, Green & Co. 1915. pp. xv, 64. 90 cents net.

In preparing this study of the Prisoners of War Information Bureau, established by the British Government in pursuance of the provisions of the Geneva Convention of 1906 and the Hague Convention of 1907 concerning the laws and customs of war on land, the author has performed a useful service to those who are interested more particularly in the humanitarian side of war. Sections III to XI, inclusive, deal with the constitution and actual work of the bureau in performing the various duties with reference to prisoners of war now imposed upon belligerents by international convention. Appended to these sections are reproductions of the blank cards and forms used by the bureau in keeping its records and making its returns.

Section I states the provisions of the Hague and Geneva Conventions, and Section II contains a summary of the former barbarous practices and of the growth of the present humanitarian practice with reference to the treatment of prisoners of war. It is interesting to note that bureaux of information concerning prisoners of war were voluntarily established by belligerents in most of the wars since the Geneva Convention of 1864, the principal exceptions being the Boer War and the Spanish-American War.

The introduction by Professor Oppenheim, of the University of Cambridge, at whose suggestion the brochure was prepared, calls attention to the enlargement in the present war of the class of persons considered prisoners of war to include enemy civilians in the territory of belligerents, which, he states, is an entirely novel departure. He justifies the practice of interning enemy civilians who are reservists or are of a military

age, on the ground that all able-bodied men within certain ages are now potential members of the armed forces, and a belligerent cannot be expected to allow such enemies to withdraw to join the armed forces. If the number of such aliens is so great that the belligerent's safety is endangered, he may, for military reasons, be compelled to intern them. Professor Oppenheim holds that "if a person is interned at all, his treatment as a prisoner of war is the mildest treatment possible," and he attaches a memorandum from Sir Edward Grey to the American Ambassador, outlining in detail the treatment of interned civilians and prisoners of war in Great Britain.

In concluding his work, Mr. Roxburgh states that "it is perhaps not too much to hope that if the humane endeavors of the British Government were better known to the world and to the people of Germany, they would out of gratitude urge their own Government to take more pains to see that inquiries from England were answered, and to send complete, regular, and accurate lists of British and Belgian prisoners of war in Germany, and of soldiers buried by the German armies." Our readers who are interested in pursuing the subject of the treatment of interned British subjects in Germany are referred to the reports of the American officials communicated to the British Government and laid before Parliament, listed in the "Public Documents relating to International Law," in this Journal for July and October, 1915.

GEO. A. FINCH.

Nationalism and War in the Near East. "By a Diplomatist." Edited by Lord Courtney of Penwith. (Published under the direction of the Carnegie Endowment for International Peace, Division of Economics and History, John Bates Clark, Director.) Oxford: Clarendon Press. 1915. pp. xxvi, 428+6. \$4.15 net.

Lord Courtney of Penwith in his editorial preface to this most interesting book well says:

This is an original, thoughtful, and a thought-provoking book. It invites to inquiry and reflection. * * * The real student will be thankful for the lead he gets, but he will examine and re-examine the statements of facts and arguments submitted for his consideration. The book will thus prove its value, and it may be recommended to those who wish to learn, few perhaps rather than many, with the counsel long since given: "Try all things. Hold fast to that which is good."

This word of appreciation constitutes a discriminating criticism of a general character which may properly serve as the basis of a review of the book in question.

It should be noted that this book was written before the outbreak of the present war at the request of the Division of Economics and History of the Carnegie Endowment for International Peace, in pursuance of a recommendation made by the Conference of foreign representatives held at Berne in 1911 under the auspices of the Endowment. This recommendation called for research on the topic "Historical presentation of the causes of war in modern times, tracing especially the influence exercised by the striving for political power, by the growth of the national idea, by the political aspirations of races and by economic interests." No more vitally interesting field of research could have been chosen than that of the Near East where the question of nationalism has been so prominently and vigorously to the foreground in recent years.

The person chosen for this great task, judging by intrinsic evidence, was evidently well qualified by reason of his intellectual capacity as well as by reason of his training as a journalist and diplomatist. His very anonymity lends interest to his book. In fact it leads one to ask whether the cause of truth would not be better served if we could concentrate our interest on ideas rather than on the character and prestige of the one who speaks.

Whether one assents or not, the ideas presented in this volume are extraordinarily interesting. It must be confessed that the author would seem to be laboring under something of a disadvantage in endeavoring for the first time perhaps in his experience to find the philosophical explanation for political phenomena which he has previously considered rather from the journalistic and diplomatic points of view. In this respect he is not always convincing. He frequently interjects theories concerning the militaristic causes of war, the "democratization of diplomacy "and other matters, in an incomplete manner that cannot convince. His conclusions frequently seem tentative rather than final. In some places his inferences are obviously without justification. For example, he attributes to President Wilson the deliberate intention to restore the balance of power in the Aegean by recommending the sale of two battleships to Greece by the United States Government! It is to be hoped that the Turkish Government did not also interpret this action of the United States as does the author:

The policy of the United States President, both in its inspiration and method, should cause some searchings of heart to those who reflect what might have been the history of the Balkan Wars had the democracies of Western Europe been represented by such elevated inspiration and by such effective intervention (p. 291).

There are many statements which challenge acceptance, such as, for example, the assertion that King Ferdinand of Bulgaria was not personally responsible for the aggression of Bulgaria against Greece and Serbia in 1911 known as the War of Partition. As keen and competent an observer as President Jacob Gould Schurman, former Minister to Greece, reaches quite the opposite conclusion in his book entitled, "The Balkan Wars."

In spite of these apparent vagaries of judgment, the book is so full of absorbingly interesting events, striking comments, and searching inquiries, that it fully merits the characterization of Lord Courtney as "original, thoughtful, and thought-provoking." An example of the thought-provoking nature of the book is the author's unique theory that the Turks have been cursed by Byzantism: that "the decadence of the Turk dates from the day Constantinople was taken and not destroyed."

It is interesting to note the author's method of treating his subject as indicated by the Table of Contents. The introduction, Chapter I, treats most suggestively and even epigrammatically of the subjects of Nationality and Civilization in the Near East. Chapter II deals entertainingly with the eternal Eastern Question under the headings of Byzantism, Hellenism, Panslavism and Philhellenism. Chapter III presents a most concise and satisfactory résumé of the tangled Macedonian Question. Chapter IV takes up quite fully the genesis and accomplishments of the Ottoman Revolution of 1908. Chapters V, VI, and VII set forth most clearly the military and diplomatic events relating to the War of Coalition in 1912, and the resulting War of Partition, which wrought such terrible havoc eventually for the whole of Europe as well as for the Balkan States themselves. Chapter VIII sums up in a judicious, wise way, as subsequent events proved, "present" conditions in the Balkans, that is to say, those just preceding the outbreak of the great war in 1914. These he considers under the several heads of "economic," "political," and "moral" results of the Balkan Wars, showing the respective profits and losses, the menacing political effects in Europe as well as in the Near East, and the attendant demoralization the author believed to have taken place.

It is not possible within the scope of this review to do justice to the various conclusions reached by the writer. It may be that the chief value of his work lies rather in the facts he presents and the momentous questions he raises. One large conclusion, however, which deserves special

mention, is to the effect that the peace of Europe depends largely on a frank recognition of the rights of nationalities: that the fictitious principle of the balance of power has proved a complete failure. In reading this intensive study of a specific field, one is impressed by the tremendous vitality, the dynamic force of the spirit of nationalism, and of the corresponding folly of a policy which ignores this dynamic force. One would like to quote freely some of the striking observations of the author on this great subject. The following will have to suffice:

If, as must be admitted, a war may be a phase of progress towards the emergence of a nationality or the emancipation of a democracy, then, to go a step further back, a war which submerges a nationality and suppresses popular rights may serve a social purpose under certain conditions. This is a hard saying, but if nations that have sinned are to be saved, they perhaps can only be saved as by fire. It does not follow that oppression is not an offence or that arbitrary alien rule is not an anomaly for which the penalty will be paid by the party responsible. The partition of Poland was a crime for which the penalty has been paid and is being paid both by the accomplices, at the price of a century of antagonisms and armaments, and by the civilization which permitted it, in the loss of the Polish national contribution to the arts. But the Poland that succumbed as an aristocracy has been helped by its submergence to become, as it is now becoming, a democracy. A people must be a democracy before it can be a nation; though it can, as Bulgaria has done, combine in one effort the achievement of both grades" (p. 19).

A European war is either a crime against civilization or a crusade on behalf of it; for we have become men, and should have put away such childish things as trial by battle. But there are young European communities who have still to fight their war of independence for liberty, adolescent communities that have still before them their civil war for equality, and adult communities that will have to face their social war for fraternity. Some European peoples are not yet democracies: others are yet not nations: none are yet Christian communities. War may be necessary to convert a democracy into a nation; it may be noble when it is to raise a people to a democracy; and there are still Crusades for a Peter Hermit to preach and Holy Wars for a Bunyan to prophesy (p. 4).

In conclusion, it is gratifying in a book-review in a scientific journal devoted to the promotion of international law to express appreciation of the work of the Carnegie Endowment for International Peace in seeking to encourage a thorough, scientific study of the causes of war, and an accurate understanding of international relations. The cause of world-peace has perhaps been discredited at times by its most ardent advocates through a lack of scientific spirit and an excess of the zeal of a reformer. International law likewise has probably suffered considerably through the attempts of publicists to present law as they think it ought

to be rather than to state it as it is: to preach theories and abstractions having slight practical relation to the facts of international existence.

It is greatly to be hoped that the Carnegie Endowment for International Peace will be prepared to lend its great influence still further in support of a profound, dispassionate, scholarly investigation and analysis of the many tremendous problems affecting international relations and the law which must govern these relations. This volume on Nationalism and War in the Near East is a valuable contribution to the subject.

PHILIP MARSHALL BROWN.

O Brasil e seus principios de neutralidade (Brazil and her Principles of Neutrality). By Helio Lobo. Rio de Janeiro: Imprensa nacional. 1914. pp. 140.

The excellent organization and permanent character of the Brazilian diplomatic service have not merely borne fruit in that great republic's various diplomatic triumphs, many of which have marked signal advances in the application of international law and the judicial settlement of international disputes, but have also furnished the literature of modern international law with several pertinently interesting monographs, whose carefully analytic preparation renders them not merely useful as indicating the viewpoint of the largest in area of the American republics on many international law questions, but also valuable as compilations from state papers and diplomatic correspondence along varied lines. Helio Lobo is one of the ablest of the young Brazilian diplomatic authors. In his previous work, O Tribunal Arbitral Brasiliero-Boliviano (The Brazilian-Bolivian Arbitration Tribunal) published at Rio de Janeiro in 1910, he outlined the peaceful settlement and negotiation of one of the oldest and most important of modern boundary disputes which has been settled by arbitration, and in his O Brasil e seus principios de neutralidade (Brazil and her principles of neutrality) he illustrates other instances of the settlement of irritating international incidents by arbitral discussion.

He endeavors to prove his thesis as set forth in the preface,—that Brazil's constant and very strict compliance with the principles of neutrality, which, whether active or passive, are governed by certain rules and methods of procedure, and which have always been maintained whenever occasion arose, by citations from official documents and concise explanations of the eleven different instances when the

American Republic with the most frontiers, both terrestrial and maritime, has been obliged to issue neutrality proclamations or declarations. Chapters IV and V are of particular interest to United States readers, as they give us the Brazilian viewpoint of the cases of the Sumter, Georgia, Alabama and Florida in our own war between the States.

Chapter VII illustrates an interesting phase of inter-American diplomacy of the eighteen-sixties, while Chapter VIII, dealing with the cases of the capture and conveyance to Rio de Janeiro on September 14, 1870, of the German merchantmen Lucie and Concordia by the French man-of-war Hamelin, reads singularly like some of the discussions evoked by the present war in Europe. The above vessels are conveniently referred to as "German" although the "Minister of Prussia and the North German Confederation" conducted the diplomatic negotiations at Rio de Janeiro on their behalf, as the German Empire had not yet then been founded. The Hamelin left her two merchant prizes in Rio de Janeiro and sailed therefrom on September 23d, without even leaving on board them a crew sufficient to prepare them to go to sea after their cargo had been discharged. Their cargo consisted of neutral merchandise destined for Rio de Janeiro. In short, not merely were the prizes totally abandoned, but the inherent obligations of the captor were neglected. On October 13th the French cruiser Bruix, acting under official instructions, came to Rio, placed a crew on the prizes and took them back to France, in spite of the protests of the Brazilian Government. After the war, in 1872, the French Government acknowledged the mistake of the commanding officer of the Hamelin in abandoning the prizes in Rio harbor, satisfaction being thereby given to the Brazilian Government.

The lack of an index slightly impairs the usefulness of this otherwise interesting and valuable treatise, which the author's wide knowledge of his country's diplomatic relations has rendered a timely contribution to one of the most pressing problems of modern interenational law.

CHARLES LYON CHANDLER.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

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KATHRYN SELLERS.



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Chief, 2 Jackson Place, Washington, D. C.



THE DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS ADOPTED BY THE AMERICAN INSTITUTE OF INTERNATIONAL LAW $^{\rm 1}$

With this meeting we finish the first decade of this Society. How great is the change of conditions in the field of international law during that period. Ten years ago all the governments of the world professed unqualified respect and obedience to the law of nations, and a very small number of persons not directly connected with government knew or cared anything about it. In this country at least international law was regarded as a rather antiquated branch of useless learning, diplomacy as a foolish mystery, and the foreign service as a superfluous expense. - Now that governments have violated and flouted the law in many ways and with appalling consequences, the people of this country at least have begun to realize that observance of the law has a real and practical relation to the peace and honor of their own country and their own prosperity. They are beginning to take an interest in the subject, to discuss it in the newspapers, to inquire how observance of the law may be enforced. There appears a dawning consciousness that a democracy which undertakes to control its own foreign relations ought to know something about the subject. If we had not established this Society ten years ago to study and discuss and spread a knowledge of international law it would surely be demanded now, and we may be certain that our annual public discussions and the publication of the admirable Journal which we have always maintained, with its definite and certain information upon international events, its interesting and well informed discussion of international topics, and its supplements, with their wealth of authentic copies of international documents, have contributed materially towards fitting the people of our country to deal with the international situations which are before them.

Following our example, all the American countries have established

¹ Opening address by Elihu Root, as President of the American Society of International Law, at its Tenth Annual Meeting in Washington, April 27, 1916.

similar societies, so that there are now twenty-one such societies on the American continents. In most cases these societies have been organized with the direct approval and sympathy of the government of the country and they include in their numbers a large part of the most eminent leaders of opinion in all the American states. Still another institution has been created in the American Institute of International Law, composed of delegates selected, to a limited number, by each of these national societies. This institution has been established not as a competitor of the Institut de Droit International, which selects its members from among all the civilized countries, and not with the idea that there is such a thing as American international law to be distinguished from general international law, but with the idea that there may be special American views upon international questions; that the circumstances of the American republics may make it desirable for them to insist upon and press forward the development of particular principles in the law; that there are varieties of opinion upon such subjects which it may be useful to subject to common discussion and comparison of views; that the promotion of the habit of thinking broadly and internationally and not narrowly or locally, and a knowledge in each country of the points of view and habits of thought of each other country, will make all the American states more useful members of the family of nations, more considerate, more tolerant of differences of opinion, and more conscious of the international duties which are correlative to international rights.

The American Institute of International Law held its first meeting in Washington in December last, and, after a discussion in which representatives from all parts of the new world engaged, it adopted as its point of departure for future discussions a declaration of the rights and duties of nations which I commend especially to your attention. The declaration was in these words:

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself with-

out interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

You will observe that this declaration states in the main familiar principles. We have long been accustomed to such statements in the text-books. Indeed the official reporter of the Institute, in his commentary upon the declaration, undertakes to show and does show that every statement, far from being novel, is based upon the decisions of American courts and the authority of American publicists. Yet the declaration was not superfluous or unimportant. There is a vast difference between the occasional decisions of a national court or the opinions of individual students, and a unanimous agreement of representatives of all the sovereign states of the Western Hemisphere upon a statement in definite terms of fundamental principles of international right. A still more important reason for such a declaration lies in the fact that the fundamental principles declared, now stand denied or repudiated by the conduct of nations in the great war that rages in the old world.

This instrument asserts the right of every nation to continued existence, to independence, to exclusive jurisdiction over its own territory, and to equality with every other nation; and it denies the right of any nation to commit for its own protection or preservation, unlawful acts toward innocent and unoffending states. These are the fundamentals of international right. They involve the existence of a democratic community of nations in which each individual nation has the same rights and full liberty for their enjoyment, limited and limited only, by the equal rights of every other member of the community. The body of rules of action which long experience and general consent have worked out for the assertion and preservation of these rights and the application of the universal limitation upon them in the practical relations between nations constitutes international law. This scheme of organization of the civilized inhabitants of the earth is sharply distinguished from the conditions of tribal hostility which prevailed during all the early part of human history and in which each separate tribe maintained its independence and liberty as best it could by force of arms in a normal relation of hostility to all other tribes, and it is equally distinguished from the condition of subordination and suzerainty in which a single nation, acquiring a preponderance of power, reduces other nations to submission and imposes upon them friendly relations with each other as equal vassals of the superior state. A familiar example of the one extreme is to be found in Europe during the Middle Ages and of the other in the Roman Empire, and upon a smaller scale and for a brief period in the control of Napoleon over a large part of continental Europe. One condition affords independence to strong, civil societies at the expense of progress in civilization. The other condition fosters the arts of peace at the cost of liberty. The democratic organization of a community of nations, on a basis of acknowledged right, declared and protected by law, seeks to avoid both of these extremes, and the vast progress of civilization since the Peace of Westphalia, with the general advance of mankind in comfort, intelligence, individual freedom and opportunity, testify to the superior merit of the arrangement. Yet just as ordinary democracies composed of natural persons tend, unless continually restrained, to lapse into anarchy, on the one hand, or to seek security under autocracy, on the other, this community of nations has hitherto been in a condition of unstable equilibrium, always in danger of being overturned in one direction or the other. The age-long struggle to maintain the balance of power in Europe, often misguided, as we can see in looking back, often controlled by selfish purposes, often violating the very rights it professed to preserve, has nevertheless been a constant effort to counteract these tendencies.

A careful examination of the undisputed facts which show the origin and conduct of the present war leaves no room for doubt that the entire basis of the community organization of nations upon which rests the structure of international law is put at issue in the struggle. The principles of action upon which the war was begun involve a repudiation of every element of fundamental right upon which the law of nations rests. The right of every nation to continued existence, to independence, to exclusive jurisdiction over its own territory, and equality with other nations, is denied. The right of any strong nation to destroy all those alleged rights of other nations in pursuit of what it deems to be useful for its own protection or preservation is asserted. Under this view what we have been accustomed to call fundamental rights would become mere privilege to be enjoyed upon sufferance according to the views of expedience held by the most powerful. If this view prevails the whole structure of modern international law will be without foundation; and the discussion of its rules with the nations who maintain this view must now be not a real appeal to any law, but merely a balancing of possible injuries and benefits. So long as these fundamental questions are unsettled all discussion of international law must be hypothetical, as if architects were to discuss the elevation of a building while the ground plan remains undetermined. These propositions are the postulates of all reasoning regarding the rules of international law. All discussion of international right is based upon them, assumes assent to them. To discuss international law with a nation which denies these postulates can be nothing but an unreal and futile appearance of discussing the law. When your major premise is disputed you must establish that before you can go on with your argument. There is only one real question of international law to-day, and that is, whether these postulates of the law are to stand or not. As between nations which agree that they should stand there may be discussion as to international rules based upon that hypothesis, but as between nations which assert and nations which repudiate these fundamentals of the law there can be no real discussion except of expediency. The declaration of the American Institute of International Law arrays the members of all these American countries upon one side of this vital question of principle which is being fought out in the great war. Their act is altogether impersonal. It takes no account of responsibility or blame or racial feelings or friendships or enmities, and it is unmistakable. The representatives of all the American countries affirm the old basis of international right upon which depends the life, the independence and the legal equality of all small nations and the laws which protect them against the arbitrary power of the strong.

It will be useful to remember, however, that to be effective such declarations must be accompanied by conformity in the conduct of the nations adhering to the principles declared. There are some rules of national conduct which flow directly from the principles of national independence and equality but which do not always coincide with the impulses of sentiment or with the apparent requirements of immediate interest.

On the one hand, these principles require that nations shall refrain from interference with the internal affairs of other nations. quently happens that many persons, in the United States for example, strongly disapprove things that are done in other countries within the jurisdiction and affecting the citizens of those other countries and not affecting any country's international rights. Such acts may run counter to our ideas of liberty, of morality, of humanity, of fair business conduct. The strongest sentiments and interests may urge interference to prevent conduct which shocks or offends us, yet, failing some special and exceptional ground—some recognized international ground for intervention we have no right to interfere, because interference would be an infringement upon the independent equality of the other state. The peace and order of the world require that each nation shall mind its own business and refrain from attempting to impose its ideas of conduct upon other equally independent states. This is not because the interference in the particular case might not be beneficial so far as that case goes; but because the right to interfere in one case carries with it the right to interfere in other cases; the determination of the question when interference is justifiable would necessarily rest with the interfering Power; and in the exercise of such a right all weaker states would become subject to the control of the stronger and ultimately to the control of the strongest. With the great varieties of race and custom and conceptions of social morality in the human family the right of each nation to conduct its own internal affairs according to its own ideas is of the essence of liberty.

The rule which prohibits interference by other nations, with however good a purpose, is a rule against inevitable tyranny. It is not at all uncommon that the best impulses and sentiments of our own people in this country are enlisted in favor of action by our government which would do infinitely more harm than good, by breaking down the barrier which the principle of the independent equality of states presents against the evils of foreign domination.

On the other hand, the assertion of the independent equality of states implies an interest on the part of all states adhering to the doctrine in having it preserved, and it follows necessarily that when one sovereign state is dealing not with its internal affairs but with its international relations and violates the rule of right as against another equal and independent state, all other equally independent states have a right to insist that the international rule shall be observed, and such insistence is not interfering with the quarrels of others but is an assertion of their own rights. In each case every state must be guided by its own circumstances and interests in determining how far it will go in supporting its interference. There can, however, be no doubt of the international right to interfere in behalf of the maintenance of the law. So far as it is possible to see now, if the issue of the present conflict leaves the fundamental basis of international law still existent, the possibility of securing conformity to the rules of law resting upon that basis will depend upon the recognition by the nations in general of the duty to interfere and insist upon the observance of the law and upon the adoption by them of a practice in conformity with that duty. The exercise of such an international right was well illustrated when, in November, 1861, the Commander of the United States man-of-war the San Jacinto took the Confederate commissioners, Messrs. Mason and Slidell, from the neutral British passenger vessel, the Trent. Upon England's demanding the surrender to her of Mason and Slidell, the Prussian Minister for Foreign Affairs, Count Bernstorff, the father of the present German Ambassador to the United States, wrote to the Prussian Minister at Washington for communication to the American State Department a letter, dated at Berlin, December 25, 1861. He said:

The maritime operations undertaken by President Lincoln against the Southern seceding States could not, from their very commencement, but fill the King's Government with apprehensions lest they should result in possible prejudice to the legitimate interests of neutral Powers.

These apprehensions have unfortunately proved fully justified by the forcible seizure on board the neutral mailpacket the *Trent*, and the abduction therefrom, of Messrs. Mason and Slidell by the Commander of the United States' man-of-war the *San Jacinto*.

This occurrence, as you can well imagine, has produced in England and throughout Europe the most profound sensation, and thrown not Cabinets only, but also public opinion, into a state of the most excited expectation. For, although at present it is England only which is immediately concerned in the matter, yet on the other hand, it is one of the most important and universally recognized rights of the neutral

flag which has been called into question.

* * * In the absence of any reliable information we were in doubt as to whether the Captain of the San Jacinto, in the course taken by him, had been acting under orders from his Government or not. Even now we prefer to assume that the latter was the case. Should the former supposition, however, turn out to be the correct one, we should consider ourselves under the necessity of attributing greater importance to the occurrence, and to our great regret we should find ourselves constrained to see in it not an isolated fact but a public menace offered to the existing rights of all neutrals.

The French Foreign Office wrote, on the third of December, 1861, to the French Minister in Washington:

The wish to contribute to prevent a conflict, imminent perhaps between two Powers towards which it is animated by sentiments equally friendly, and duty to maintain certain principles essential to the security of neutrals with the effect of protecting the rights of its own flag from injury, have convinced it (the Government of the Emperor) after matured reflection, that it cannot under these circumstances remain altogether silent.

M. Thouvenel then discusses the merits of the *Trent* Affair, and proceeds:

Not wishing to enter into a more thorough discussion of the question raised by the capture of MM. Mason and Slidell, I have said enough about it, I believe, to establish that the Cabinet at Washington would not be able, without infringing upon the principles for which all neutral Powers are equally interested in assuring respect or without contradicting its own conduct up to this time, to give its approval to the proceedings of the Commander of the San Jacinto.

The Austrian Government instructed its Minister in Washington in the same sense.

Here was a case in which these great Powers asserted unhesitatingly their interest in maintaining the common right of nations to have the rules of international law maintained. The case happened to be free from those obstacles to frank expression which have been so frequently presented by the delicate adjustments necessary to preserve the balance of power in Europe, and accordingly the Powers expressed themselves freely. It never occurred to anybody to deny that they were within their rights. We can hardly doubt that their expressions had a material effect in leading to the action of the American Government in preventing war between Great Britain and the United States and in making effective a rule of law which protects the rights of all neutrals.

Any nation which adheres to the American Institute's declaration of the rights and duties of nations rests under a duty, whenever the law which declares and protects those rights is clearly violated or threatened, to follow some such course as these continental nations followed in the Trent case. This is not a duty created by law or by treaty. There is no legal obligation, but there is a moral obligation, supported by enlightened self-interest, such as urges every member of a civil community who is worthy of respect to give his voice, his influence, his example, towards the preservation of the law through which alone the community can continue to exist. If the nations really wish to have peace and order maintained by law they must take an interest in having the law observed. They must really mean it, and act accordingly.

Furthermore the declaration of the Institute asserts the subordination of nations to the obligations of morality. It denies that any aggregation of human beings in any state, under any form of government, can be superior to the duties of good faith, of justice, and of humanity. I shall not discuss that. No democracy, no republic, no form of government based upon the rights of men, can continue to live in a world which rejects that view. This republic cannot continue to live in a world which rejects that view.

It is to be observed that this declaration, in which representatives of all the American countries unite, asserts for all the world as a matter of general public right the same principles which, somewhat more narrowly and upon a different ground, the famous declaration of President Monroe asserted in respect of the American Republics. The message of Monroe affirmed in effect that all the American states were to be regarded as members of the community of nations; that they were entitled to live, to be independent, to be treated as equals, and to be free from oppression by other Powers. He gave notice that the attempt by any European Power to override these rights of the American states would be regarded as unfriendly to the United States because it would be dangerous to the peace and safety of the United States.

As we turn from the narrow limits of the Monroe Doctrine to the broader field of universal international right set forth in the declaration of the Institute, with the terrible lesson of the great war in our minds, we may well assert that the repudiation of these principles, the violation of these rules anywhere within the confines of civilization, is dangerous to the peace and safety of the whole community of nations. To the efforts of the community of nations towards defending its peace and safety against the destruction of the fundamental bases of its public right, the often quoted words of Mr. Calhoun regarding the Monroe Doctrine are applicable. He said, in the Senate, in 1848:

Whether you will resist or not, and the measure of your resistance—whether it shall be by negotiation, remonstrance, or some intermediate measure, or by a resort to arms; all this must be determined and decided on the merits of the question itself. This is the only wise course. * * * There are cases of interposition where I would resort to the hazard of war with all its calamities.

Whether the United States will soon have occasion or will long have the ability or the will to maintain the Monroe Doctrine lies in the uncertain future. Whether it will be necessary for her to act in defense of the doctrine or abandon it may well be determined by the issue of the present war. Whether when the occasion comes she will prove to have the ability and the will, to maintain the doctrine depends upon the spirit of her people, their capacity for patriotic sacrifice, the foresight and character of those to whose initiative in foreign affairs the interests of the people are entrusted.

Whether the broader doctrine affirmed by the American Institute of International Law is to be made effective for the protection of justice and liberty throughout the world depends upon whether the vision of the nations shall have been so clarified by the terrible lessons of these years that they can rise above small struggles for advantage in international affairs, and realize that correlative to each nation's individual right is that nation's duty to insist upon the observance of the principles of public right throughout the community of nations.

ELIHU ROOT.

THE NEGOTIATIONS BETWEEN JAPAN AND CHINA IN 1915

One of the most far reaching events which may be said to have sprung indirectly from the European War, is the readjustment of the relations between Japan and China. The exact nature of this readjustment is but dimly understood in the United States, and its ultimate effects upon which is commonly called the Far Eastern Question, can be but vaguely foreseen at the present time. But the world will not fail to realize that these effects will be momentous. For this reason it is timely to trace the history of the "Japanese demands" upon China, to study the negotiations that followed and their results as embodied in the new treaties between the two Powers.

In attempting an impartial statement regarding this negotiation, it is impossible not to take cognizance of the fact that the demands of Japan for a radical modification of her treaty relations with China, followed within six months after the outbreak of the European War, and at a time when Japan's ally, Great Britain, was engrossed in that war, and unable to give close attention to Far Eastern matters. Under the terms of the Anglo-Japanese Alliance signed August 12, 1905, as modified July 13, 1911, the two governments are mutually bound to "the preservation of the common interests of all Powers in China by insuring the independence and integrity of the Chinese Empire, and the principle of equal opportunities for the commerce and industry of all nations in China." To what extent, if at all, that agreement may have to be disregarded in the new treaties, is a question certain to be raised when the European War shall have come to an end.

In the meanwhile, all the documents in relation to the negotiations justify the statement that the treaties were forced upon China against her protest and resistance; that they were accompanied by the dispatch of Japanese troops to strategic points in China, and the announcement that they would not be withdrawn until the negotiations were concluded; and that the demands, so far as they were acquiesced in, were accepted under duress. As originally presented, these demands would have es-

tablished Japanese hegemony in the Far East. To what extent this situation has actually been brought about, can only be determined by future events.

In examining diplomatic negotiations between governments, especially in so complicated a case as those between Japan and China, it is important that the point of view of each shall be fully and fairly presented, so far as official statements make it possible to do so. The assertions, denials and counter assertions have been so many in this instance, that it seems proper to devote the necessary space to the statements of both nations.

The original Japanese demands were handed to the President of the Chinese Republic, Yuan-Shih-Kai, on January 18, 1915, by Mr. Eki Hioki, the Japanese Minister at Peking. This course was regarded by the Chinese Foreign Office as a departure from the ordinary methods of diplomatic negotiation; but the government waiving the informality, there ensued a series of conferences which continued from February 2 to April 7, twenty-four conferences being held. "Throughout this whole period the Chinese Government steadfastly strove to arrive at an amicable settlement and made every concession possible," says the official Chinese statement.

Of the twenty-one demands originally submitted by Japan, China agreed to fifteen, some in principle and some textually, six being initialed by both parties.

On April 18, the conferences were summarily suspended by Japan, whose Minister at Peking submitted a revised series of demands on April 26, whereupon the conferences were resumed and continued until May 7. On the latter date the Japanese Minister presented an ultimatum, accompanying a revised series of demands, seven in number, which concluded as follows—we use the Chinese translation:

The Imperial Government hereby again offer their advice and hope that the Chinese Government, upon this advice, will give a satisfactory reply by six o'clock p. m. on the ninth day of May. It is hereby declared that if no satisfactory reply is received before or at the specified time the Imperial Government will take such steps as they may deem necessary.

This ultimatum resulted in a prompt acceptance of the Japanese demands as finally revised, and the ratification of two treaties, under

date of May 25, 1915. These treaties are printed in the Supplement to this Journal for January, 1915, and need not here be repeated. Shortly afterwards the Chinese Government made public what was called a "frank and plain statement" of the facts connected with the negotiations that had been thus abruptly terminated. Statements were likewise issued by Count Okuma, the Premier of Japan, and there were several interpellations in the Japanese Diet, to which Baron Kato, the Foreign Secretary, made reply. These documents and speeches are our main sources of information.

A full understanding of the purpose and the results of this protracted negotiation and these repeated modifications of the Japanese demands, can only be had by examining them together, and in connection with the treaties which followed. They should also be studied in connection with Baron Kato's instructions to Mr. Hioki, dated December 3, 1914, which we find in *The Far Eastern Review* for June, 1915:

In order to provide for the readjustment of affairs consequent on the Japan-German War and for the purpose of ensuring a lasting peace in the Far East by strengthening the position of the Empire, the Imperial Government have resolved to approach the Chinese Government with a view to conclude treaties and agreements mainly along the lines laid down in the first four Groups of the appended proposals. * * *

Believing it absolutely essential, for strengthening Japan's position in Eastern Asia as well as for preservation of the general interests of that region, to secure China's adherence to the foregoing proposals, the Imperial Government are determined to attain this end by all means within their power. You are, therefore, requested to use your best endeavor in the conduct of the negotiations, which are hereby placed in your hands.

As regards the proposals contained in the Fifth Group, they are presented as the wishes of the Imperial Government. The matters which are dealt with under this category are entirely different in character from those included in the first four Groups. An adjustment, at this time, of these matters, some of which have been pending between the two countries, being nevertheless highly desirable for the advancement of the friendly relations between Japan and China as well as for safeguarding their common interests, you are also requested to exercise your best efforts to have our wishes carried out.

It is very likely that in the course of these negotiations the Chinese Government will desire to find out the attitude of the Imperial Government on the question of the disposition of the leased territory of Kiaochow Bay. If the Chinese Government will accept our proposals as above stated, the Imperial Government may, with due regard to the principle of China's territorial integrity and in the interest of the friendship of the two countries, well consider the question with a view to restoring the said territory to China, in the event of Japan's being given free hand in the disposition thereof as the result of the coming peace conference between Japan and Germany. As, however, it will be necessary in restoring the said territory to China, to lay certain conditions such as the opening of the territory for foreign trade, establishment of a Japanese settlement, etc., you will ask for further instructions when you propose to declare to the Chinese Government the willingness of the Imperial Government to consider the question.

The original Japanese demands were arranged in five groups, covering related subjects. The first group dealt with the Province of Shantung, in which is situated the German fortress of Kiaochow, attacked and reduced by Japan in the earlier months of the European War. Its four clauses read as follows, attention being particularly called to the preamble:

GROUP ONE

The Governments of Japan and China being desirous of maintaining the peace of Eastern Asia and of further strengthening the friendly relations existing between the two neighboring nations, agree to the following articles:

- The Chinese Government agrees that when the Japanese Government hereafter approaches the German Government for the transfer of all rights and privileges of whatsoever nature enjoyed by Germany in the Province of Shantung, whether secured by treaty or in any other manner, China shall give her full assent thereto.
- The Chinese Government agrees that within the Province of Shantung and along its sea border, no territory or island or land of any hame or nature shall be ceded or leased to any third Power.
- 3. The Chinese Government consents to Japan building a railway from Chefoo or Lungkow to join the Kiaochow-Tsinanfa Railway.
- 4. The Chinese Government agrees that for the sake of trade and for the residence of foreigners certain important places shall be speedily opened in the Province of Shantung as treaty ports, such necessary places to be jointly decided upon by the two governments by separate agreement.

At first the Chinese representatives maintained in the Conference that the subject of the first article related to the *post bellum* settlement, and should be left open for discussion by all parties interested in the European Peace Conference. They also desired an agreement that Japan would ultimately restore the leased territory of Kiaochow to China, and an agreement to indemnify China for the losses arising out of the Japanese military operations in and about the leased territory. These propositions were not accepted. As to Article 3, a slight change was made to the effect that China secured the privilege of building the railroad from Chefoo or Lungkow, provided she first approached Japanese capitalists to negotiate a loan.

In the "revised" draft of Japan's demands, presented April 26, 1915, the first group read as follows:

Article 1. The Chinese Government engages to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government, relating to the disposition of all rights, interests and concessions, which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung.

Article 2. (Changed into an exchange of notes.)

The Chinese Government declares that within the Province of Shantung and along its coast no territory or island will be ceded or leased

to any Power under any pretext.

Article 3. The Chinese Government consents that as regards the railway to be built by China herself from Chefoo or Lungkow to connect with the Kiaochow-Tsinanfu Railway, if Germany is willing to abandon the privilege of financing the Chefoo-Weihsien line, China will approach Japanese capitalists to negotiate for a loan.

Article 4. The Chinese Government engages, in the interest of trade and for the residence of foreigners, to open by China herself as soon as possible certain suitable places in the Province of Shantung as com-

mercial ports.

(Supplementary exchange of notes.)

The places which ought to be opened are to be chosen, and the regulations are to be drafted, by the Chinese Government, but the Japanese Minister must be consulted before making a decision.

These revised demands were finally all accepted by China, and accordingly an explanatory note of the Japanese Minister dated May 7, declared: "If the Chinese government accept all the articles as demanded in the ultimatum, the offer of Japan to restore Kiaochow to China made April 26, will still hold good."

The second group of demands related to South Manchuria and Eastern Inner Mongolia, and, with the preamble, read as follows:

GROUP Two

The Chinese Government has always acknowledged the specially favorable position enjoyed by Japan in South Manchuria and Eastern Inner Mongolia, and Japan therefore demands:

 That the term of lease of Port Arthur and Dalny and the term of lease of the South Manchuria and Antung-Mukden Railways

be extended to the period of 99 years.

 That Japanese subjects in South Manchuria and Eastern Inner Mongolia in erecting buildings for the purpose of trade and manufacture or for farming shall have the right to lease or own land so required.

 That Japanese subjects shall be free to reside and travel in South Manchuria and Eastern Inner Mongolia and to engage in busi-

ness and in manufacture of any kind whatsoever.

4. That Japanese subjects be granted the right of opening all mines in South Manchuria and Eastern Inner Mongolia, such mining places to be jointly decided upon by the two governments.

5. That in respect of the two following subjects mentioned herein below the Japanese Government's consent shall be first obtained

before action shall be taken:

(a) Whenever permission is granted to the subject of a third Power to build a railway or make a loan with a third Power for the purpose of building a railway in South Manchuria and Eastern Inner Mongolia.

(b) Whenever a loan is to be made with a third Power pledging the local taxes of South Manchuria and

Eastern Inner Mongolia as security.

 That if the Chinese Government in South Manchuria or Eastern Inner Mongolia employs advisers or instructors for political, financial, or military purposes the Japanese shall first be consulted.

7. That the control and administration of the Kirin-Changehun Railway shall be handed over to the Japanese Government to take effect on the signing of this agreement, the term to last for 99 years.

As presented in the "revised" form, Group Two read as follows:

Article 1. The two contracting Powers mutually agree that the term of lease of Port Arthur and Dalny and the terms of the South Manchuria Railway and the Antung-Mukden Railway, shall be extended to 99 years.

(Supplementary exchange of notes.)

The term of lease of Port Arthur and Dalny shall expire in the 86th year of the Republic, or 1997. The date for restoring the South Manchurian Railway to China shall fall due in the 91st year of the Republic,

or 2002. Article 12 in the original South Manchurian Railway Agreement that it may be redeemed by China after 36 years after the traffic is opened is hereby cancelled. The term of the Antung-Mukden Railway shall expire in the 96th year of the Republic, or 2007.

Article 2. Japanese subjects in South Manchuria may lease or purchase the necessary land for erecting suitable buildings for trade and

manufacture or for prosecuting agricultural enterprises.

Article 3. Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

Article 3a. The Japanese subjects referred to in the preceding two articles, besides being required to register with the local authorities pass-ports which they must procure under the existing regulations, shall also submit to police laws and ordinances and tax regulations, which are approved by the Japanese consul. Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by the Japanese consul; those in which the defendants are Chinese shall be tried and adjudicated by Chinese authorities. In either case an officer can be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by delegates of both nations conjointly in accordance with Chinese law and local usage. When the judicial system in the said region is completely reformed, all civil and criminal cases concerning Japanese subjects shall be tried entirely by Chinese law courts.

Article 4. (Changed to an exchange of notes.)

The Chinese Government agrees that Japanese subjects shall be permitted forthwith to investigate, select, and then prospect for and open mines at the following places in South Manchuria, apart from those mining areas in which mines are being prospected for or worked; until the Mining Ordinance is definitely settled methods at present in force shall be followed. [Places omitted.]

Article 5. (Changed to an exchange of notes.)

The Chinese Government declares that China will hereafter provide funds for building railways in South Manchuria; if foreign capital is required, the Chinese Government agrees to negotiate for the loan with Japanese capitalists first.

Article 5a. (Changed to an exchange of notes.)

The Chinese Government agrees that hereafter, when a foreign loan is to be made on the security of the taxes of South Manchuria (not including customs and salt revenue on the security of which loans have already been made by the Central Government), it will negotiate for the loan with Japanese capitalists first.

Article 6. (Changed to an exchange of notes.)

The Chinese Government declares that hereafter if foreign advisers or instructors on political, financial, military or police matters, are to be employed in South Manchuria, Japanese will be employed first.

Article 7. The Chinese Government agrees speedily to make a fundamental revision of the Kirin-Changchun Railway Loan Agreement, taking as a standard the provisions in railway loan agreement made heretofore between China and foreign financiers. If, in future, more advantageous terms than those in existing railway loan agreements are granted to foreign financiers, in connection with railway loans, the above agreement shall again be revised in accordance with Japan's wishes.

Chinese counter-proposal to Article 7.

All existing treaties between China and Japan relating to Manchuria shall, except where otherwise provided for by this convention, remain in force.

Matters Relating to Eastern Inner Mongolia

1. The Chinese Government agrees that hereafter when a foreign loan is to be made on the security of the taxes of Eastern Inner Mongolia, China must negotiate with the Japanese Government first.

2. The Chinese Government agrees that China will herself provide funds for building the railways in Eastern Inner Mongolia; if foreign capital is required, she must negotiate with Japanese Government first.

- 3. The Chinese Government agrees, in the interest of trade and for the residence of foreigners, to open by China herself, as soon as possible, certain suitable places in Eastern Inner Mongolia as commercial ports. The places which ought to be opened are to be chosen, and the regulations are to be drafted, by the Chinese Government, but the Japanese Minister must be consulted before making a decision.
- 4. In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government shall give its permission.

Japan obtained all of these demands substantially in the revised form; and the official Chinese statement makes the following comment thereon:

Owing to the bitter experiences which China sustained in the past in connection with the leased portions of her territory, it has become her settled policy not to grant further leases or to extend the term of those now in existence. Therefore it was a significant evidence of China's desire to meet Japan's wishes when she agreed to this exceptional departure from her settled policy.

 $^{\rm 1}\, {\rm The}$ terms of the leases of the Chinese ports, prior to the new treaties, were as follows:

Kiaochow	3,
Port Arthur and Dalny to Russia25 years	3.
Kuangchonwan	3.
Kowloon extension	١.
Weihaiwei so long as Port Arthur is leased to Russia	i

The Third Group of demands related to the Hanyehping Company, which comprises the Hanyang iron works, the Pinghsiang coal mines and the Tayeh ore mines. This great industrial enterprise, largely financed at its start by German capital,—an indebtedness subsequently repaid by the Chinese Government,—has been continuously in financial difficulties. In 1902, a contract was entered into between the company and the Japanese Imperial Steel Foundry, whereby the latter was to be supplied with iron ore from Tayeh for fifteen years. Later, debts were contracted with the Yokohama Specie Bank, and other debts with other Japanese concerns in 1912, and increased to \$15,000,000 in 1913, when the Japanese secured the right to appoint advisers and other officials. The shareholders have been seeking to extricate this great concern from its Japanese control, by borrowing money elsewhere, but without success. The far reaching demands of Japan with reference to this company constituted Group Three, as follows:

GROUP THREE

The Governments of Japan and China, seeing that Japanese financiers and the Hanyehping Company have close relations with each other at present, and also desiring that the common interests of the two nations shall be advanced, agree to the following articles:

(a) The two contracting Powers mutually agree that when the opportune moment arrives the Hanyehping Company shall be made a joint concern of the two nations and they further agree that without the previous consent of Japan, China shall not by her own act dispose of the rights and property of whatsoever nature of the Hanyehping Company, nor cause the said company to dispose freely of the same.

(b) The Chinese Government agrees that all mines in the neighborhood of those owned by the Hanyehping Company shall not be permitted, without the consent of the said company, to be worked by other persons outside of the said company, and further agrees that if it is desired to carry out any undertaking which it is apprehended may directly or indirectly affect the interests of the said company the consent of the said company shall first be obtained.

The official statement of the Chinese Government says that the government could not agree to the provisions of Group Three. It adds that there were six of the twenty-one original demands in the same category; that they were not proper subjects for international negotia-

tion, "conflicting as they did with the sovereign rights of China, the treaty rights of other Powers, and the principle of equal opportunity," and it adds that "the second article of the Hanyehping articles in the original Third Group in particular seriously affected the principle of equal opportunity."

The "revised" Japanese draft of Group Three, reads as follows:

The relations between Japan and the Hanyehping Company being very intimate, if the interested party of the said company comes to an agreement with the Japanese capitalists for coöperation, the Chinese Government shall forthwith give its consent thereto. The Chinese Government further agrees that, without the consent of the Japanese capitalists, China will not convert the company into a state enterprise, nor confiscate it, nor cause it to borrow and use foreign capital other than Japanese.

The following is the official Chinese statement upon the revised Hanyehping demand:

As regards the Hanyehping demand, the Chinese Government accepted the draft made by the Japanese Government, embodying an engagement by the Chinese Government not to convert the company into a state-owned concern, nor to confiscate it, nor to force it to borrow foreign capital other than Japanese.

The Fourth Group contained a single article, as follows:

GROUP FOUR

The Japanese Government and the Chinese Government with the object of effectively protecting the territorial integrity of China agree to the following special article:

The Chinese Government agrees that no island, port or harbor along the coast shall be ceded or leased to any third Power.

As modified in the "revised" draft, this article reads as follows:

China to give a pronouncement by herself in accordance with the following principle:

No bay, harbor, or island along the coast of China may be ceded or leased to any Power.

Regarding this article, the official Chinese statement makes the following comment:

As regards the single article of the Fourth Group, and the preamble thereto, the Chinese Government held that they were inconsistent with Chinese sovereignty. However, China, at this conference, expressed her readiness to meet the wishes of Japan so far as it was possible without infringing her sovereignty, and agreed to make a voluntary pronouncement that she would not alienate any portion of her coast line.

The fifth and final Group contained the following seven demands, later described as "desires":

GROUP FIVE

1. The Chinese Central Government shall employ influential Japanese as advisers in political, financial, and military affairs.

2. In the interior of China Japanese shall have the right to ownership of land for the building of Japanese hospitals, churches and schools.

- 3. Since the Japanese Government and the Chinese Government have had many cases of dispute between the Japanese and Chinese police to settle—cases which cause no inconsiderable misunderstanding—it is for this reason necessary that the police departments of important places (in China) shall be jointly administered (by Japanese and Chinese) or that the (Chinese) police department of these places shall employ numerous Japanese for the purpose of organizing and improving the Chinese Police Service.
- 4. China shall purchase from Japan a fixed ratio of the quantity of munitions of war (say 50 per cent or more), or Japan shall establish in China a jointly worked arsenal, Japanese technical experts to be employed and Japanese material to be purchased.

5. China agrees to grant to Japan the right of constructing a railway connecting Wuchang with Kiukiang and Nanchang. Also a line between Hanchang and Hangchow, and a line between Nanchang and Chaochow.

6. China agrees that in the province of Fukien Japan shall have the right to work mines and build railways and to construct harbor works (including dockyard) and in case of employing foreign capital Japan shall be first consulted.

.7. China agrees that Japanese subjects shall have the right to propagate religious doctrines in China.

As this Group Five of the demands ("desires") of Japan has caused the chief discussion in regard to these negotiations, it is important to quote also the Chinese official statement on the subject:

As regards the demands in the fifth group, they all infringe China's sovereignty, the treaty rights of other Powers or the principle of equal opportunity. Although Japan did not indicate any difference between

this group and the preceding four in the list which she presented to China in respect of their character, the Chinese Government, in view of their palpably objectionable features, persuaded itself that these could not have been intended by Japan as anything other than Japan's mere advice to China. Accordingly China has declared from the very beginning that while she entertains the most profound regard for Japan's wishes, she was unable to admit that any of these matters could be made the subject of an understanding with Japan. Much as she desired to pay regard to Japan's wishes, China cannot but respect her own sovereign rights and the existing treaties with other Powers. In order to be rid of the seed for future misunderstanding and to strengthen the basis of friendship, China was constrained to iterate the reasons for refusing to negotiate on any of the articles in the fifth group; yet in view of Japan's wishes China has expressed her readiness to state that no foreign money was borrowed to construct harbor work in Fukien province. Thus it is clear that China went so far as to seek a solution for Japan of a question that really did not admit of negotiation.

This entire group was in the end withdrawn from the negotiations, "to be discussed separately in the future." The following is a quotation from the text of the ultimatum bearing on Group Five:

As regards the articles relating to the employment of advisers, the establishment of schools and hospitals, the supply of arms and ammunition and the establishment of arsenals and railway concessions in South China, in the revised proposals they were either proposed with the proviso that the consent of the Power concerned must be obtained, or they are merely to be recorded in the minutes in accordance with the statements of the Chinese delegates, and thus they are not in the least in conflict either with Chinese sovereignty or her treaties with the foreign Powers; yet the Chinese Government in their reply to the proposals, alleging that these proposals are incompatible with their sovereign rights and treaties with foreign Powers, defeat the expectations of the Imperial Government. However in spite of such attitude of the Chinese Government, the Imperial Government, though regretting to see that there is no room for further negotiations, yet warmly attached to the preservation of the peace of the Far East, is still hoping for a satisfactory settlement in order to avoid the disturbance of the relations.

So in spite of the circumstances which admit no patience, they will reconsider the feelings of the government of her neighboring country and, with the exception of the article relating to Fukien which is to be the subject of an exchange of notes, as has already been agreed upon by the representatives of both nations, will undertake to detach the Group V from the present negotiations and discuss it separately in the future.

The same official statement of the Japanese Government concludes as follows:

The Chinese Government refused all the proposals contained in Group V of the Japanese amended project, except that relating to Fukien. In this counterdraft the Chinese Government, still further in disregard of responsible statements made by their representatives at the conferences, revived in some cases articles which had already been withdrawn and in others made alterations in matters which were agreed to. Moreover, they make demands to which it is clearly impossible for Japan to accede, such as those for the unconditional surrender of Kiaochow and indemnification for losses incurred through the Japan-German War. Furthermore, the Chinese Government declare that their counterdraft formulates their final decision. Accordingly, so long as Japan refuses to accede to these demands whatever agreement may have been arrived at on other points must ultimately be abortive and the terms offered by China prove illusory. The Japanese Government deeply regret to perceive from the attitude of the Chinese Government that it is no longer any use to continue the present negotiations. Nevertheless, being desirous, with a view to the maintenance of peace in the Far East, to make every effort to bring the negotiations to a satisfactory conclusion and thus to avoid complications in the situation, the Japanese Government, taking fully into account the wishes of the Chinese Government, decided with great forbearance, to leave out of the present negotiations and reserve for future discussion all items specified in Group V of the amended draft, except that relating to Fukien, about which an agreement has been reached. The Japanese Government instructed their Minister at Peking on May 6th that, in conveying this decision to the Chinese Government, he should earnestly advise them to give due regard to Japan's sentiment of accommodation and conciliation and express after careful consideration their assent without delay to the Japanese amended draft and at the same time announce that the Japanese Government expect from the Chinese Government a satisfactory response to this advice not later than six p. m. on 9th May.

We conclude these extracts with the reply of the Chinese Government to the ultimatum of the Japanese Government, delivered to the Japanese Minister by the Minister of Foreign Affairs, on May 8, 1915.

On the 7th of the month, at three o'clock p. m., the Chinese Government received an ultimatum from the Japanese Government together with an explanatory note of seven articles. The ultimatum concluded with the hope that the Chinese Government up to 6 o'clock p. m., on the 9th of May, will give a satisfactory reply. If no satisfactory reply

is received before or at the designated time, the Japanese Government

will take steps she may deem necessary.

The Chinese Government, with a view to preserving the peace of the Far East, hereby accepts, with the exception of those five articles of Group V postponed for later negotiation, all the articles of Groups I, II, III, and IV and the exchange of notes in connection with Fukien Province in Group V, as contained in the revised proposals presented on the 26th of April and in accordance with the explanatory note of seven articles accompanying the ultimatum of the Japanese Government, with the hope that thereby all the outstanding questions are settled, so that the cordial relationship between the two countries may be further consolidated. The Japanese Minister is hereby requested to appoint a day to call at the Ministry of Foreign Affairs to make the literary improvement of the text and sign the agreement as soon as possible.

Chinese writers state that the demands contained in this Group, together with the second article of the Hanyehping (Group III) were not communicated to the other nations, and particularly to Japan's Ally, Great Britain, at the time when the latter were officially notified that the negotiations were in progress. On May 22, Baron Kato, in reply to an interpellation in the Diet, stated that "an outline of the demands was given to Great Britain, Russia, France and the United States, but as the Fifth Group were 'desires,' they were not announced to the Powers at first. Subsequently they were communicated to these governments."

Some definite knowledge of the character of the original Japanese demands must have reached the Department of State of the United States, prior to the close of the negotiations on May 10. On May 11, the following identic communication was cabled to the Japanese and Chinese Governments:

In view of the circumstances of the negotiations which have taken place and which are now pending between the Government of China and the Government of Japan and of the agreements which have been reached as a result thereof, the Government of the United States has the honor to notify the Government of the Chinese Republic that it cannot recognize any agreement or undertaking, which has been entered into or which may be entered into between the Governments of China and Japan impairing the treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China or the international policy relative to China commonly known

as the Open Door Policy. An identical note has been transmitted to the Japanese Government.

It is for careful students of diplomacy and international law to determine whether or not the treaties and exchanges of notes involve any violations of these treaty rights, the political or territorial integrity of China or the Open Door Policy. We have included here all the printed documents which appear to be necessary for such a study.

That the general tenor of the original Japanese demands upon China, in which we include Group Five, involved a violation of the Root-Takahira agreement of November 30, 1908, would appear to be the case, upon perusal of the five stipulations of this memorable exchange of notes; these stipulations were as follows:

1. It is the wish of the two governments to encourage the free and peaceful development of their commerce on the Pacific Ocean.

2. The policy of both governments, uninfluenced by any aggressive tendencies, is directed to the maintenance of the existing status quo in the region above mentioned, and to the defense of the principle of equal opportunity for commerce and industry in China.

3. They are accordingly firmly resolved reciprocally to respect the

territorial possessions belonging to each other in said region.

4. They are also determined to preserve the common interests of all Powers in China by supporting by all pacific means at their disposal the independence and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire.

5. Should any event occur threatening the status quo as above described or the principle of equal opportunity as above defined, it remains for the two governments to communicate with each other in order to arrive at an understanding as to what measures they may consider it useful to take.

In the meanwhile it may be added that the attitude of Japan, as revealed in the extracts above printed, was imperative throughout, while that of China revealed her realization of the helplessness of her position. It is safe to say that China would have consented to none of the Japanese demands, had she not felt powerless to refuse them.

The future of China is dark, and the situation in the Far East is complicated by the uncertainties which surround that country. The unfortunate yielding of President Yuan Shih-Kai to the pressure upon him for the conversion of the Republic into an Empire, led to the rebel-

lion in Yunnan, to the reported vetoing of the whole scheme for an empire by Japan, Great Britain, and France, to the rescinding of all steps taken to inaugurate the Empire, and finally to the demand that the President resign. Thus at the moment of this writing, a state of uncertainty exists in China, the outcome of which cannot be foreseen, but may culminate at any moment.

S. N. D. NORTH.

SOME QUESTIONS OF INTERNATIONAL LAW IN THE EUROPEAN WAR ¹

 \mathbf{X}

TREATMENT OF ENEMY MERCHANT VESSELS IN BELLIGERENT PORTS AT THE OUTBREAK OF WAR

The outbreak of the European War found hundreds of merchant vessels of belligerent nationality in enemy ports or on the high seas bound to or from such ports in ignorance of the existence of hostilities, having left their last port of departure before the outbreak of war. The short period antedating the outbreak of the war, during which hostilities may be said to have been imminent, and the suddenness with which the war burst out afforded little opportunity to such vessels to escape, and consequently large numbers were caught either in enemy ports or on the high seas proceeding innocently thereto or therefrom.

The exact number of British, French, and Russian merchant vessels which were found in German ports on the outbreak of hostilities is not known, but it appears that the number was not inconsiderable. According to a statement issued by the British Navy League on July 3, 1915, 119 German, 20 Austrian, and 11 Turkish ships were detained in British ports after the outbreak of war, while 18 German and 3 Austrian ships were detained in Egyptian ports. In addition, 119 German, 7 Austrian, and 5 Turkish ships were seized while entering British or colonial ports, or while on the high seas, making a total of 302 enemy vessels which were in the possession of the British Government at the time the Navy League report was published. According to the old

¹Continued from previous numbers of this JOURNAL.

² The figures given by the London Weekly *Times* were somewhat different. In its issue of Sept. 4, 1915, the *Times* stated that 225 enemy ships had been detained or captured at sea, aggregating a total of about 550,000 tons. According to the list published by officials of the Prize Court in September, 1915, there were 97 German prizes in the custody of the British Prize Court. Owing to the disappearance of the German navy and merchant marine from the ocean, few captures were made by Great Britain except during the early weeks of the war.

practice, all enemy merchant vessels found in port at the outbreak of war or captured on the high seas while proceeding to or from such ports whether ignorant of the outbreak of hostilities or not, were liable to capture as "droits of admiralty," and in practice such vessels were usually condemned as good prize.3 This liability to capture existed in fact long after the practice of appropriating enemy private property on land had generally been abandoned, and frequently embargoes on vessels in port were laid in anticipation of war, so that in the event of hostilities they might be confiscated. But, says de Boeck, the practice of seizing without previous notice and on the very day of the declaration of war merchant ships and goods belonging to peaceable citizens who were carrying on their trade under the faith of treaties was too severe.⁵ Bluntschli adds that "modern juridical sentiment revolted against the particularly brutal application of the old principle that a belligerent may lay his heavy hand upon enemy merchant ships and the cargoes which they carry." 6 Accordingly a new practice known as the indult or délai de faveur was introduced, by which enemy merchant vessels in ports at the outbreak of war were allowed a certain period to depart without molestation. This favor was first accorded in practice during the Crimean War, when the Porte granted to Russian vessels in Ottoman ports the privilege of departing within a fixed period. France and Great Britain followed the action of the Porte and allowed Russian ships of commerce in their ports at the outbreak of the war six weeks to load their cargoes and depart. Moreover, Russian merchant ships which had left their port of departure before the outbreak of war were allowed

[&]quot;It was the general usage of Europe," says Merlin in the beginning of the nine-teenth century, "that whenever one Power declared war against another he seized instantly all ships belonging to the enemy or his subjects, which were found in his ports." Cited by Pistoye et Dunerdy, Traité des Prises Maritimes, T. I, p. 122. Concerning the old practice see also de Boeck, de la Proprieté Privée Enemie sous Pavillon Enemie, sec. 234; Dupuis, Le Droit de la Guerre Maritime d'après les Conférences de la Haye et de Londres, p. 163; Scott, Status of Enemy Merchant Ships, American Journal of International Law, Vol. II, pp. 260-261.

Westlake, International Law, pt. II, p. 42; and Moore, Digest of International Law, Vol. VII, sec. 1196.

^b Op. cit., sec. 234. For the same view see Bonfils, Droit International Public, sec. 1399.

⁶ Droit International Codifié, Trans. by Lardy, Art. 669.

to enter the ports of Great Britain and France, discharge their cargoes, reload, and to depart without molestation. Russia accorded a similar délai to British and French ships. In the war of 1866 Prussia allowed a délai of six weeks to Austrian ships in Prussian ports, and to those proceeding to Prussian ports in ignorance of the war, but it was conditioned on reciprocity of treatment by Austria. At the outbreak of the Franco-German War of 1870-71, France gave German merchant vessels a period of thirty days in which to depart, and allowed those which entered a French port after the declaration of war in ignorance of the existence of hostilities a similar privilege. The King of Prussia on January 19, 1871, revoked the ordinance of July 18, 1870, which exempted French merchant vessels from capture, but with the stipulation that it was not to take effect until February 10th following.9 During the Russo-Turkish War of 1877-78 délais were accorded by both belligerents, and at the outbreak of the war between Greece and Turkey in 1897 the Sultan allowed a period of fifteen days during which Greek merchant vessels might depart from Ottoman ports.

Upon the outbreak of the war between Spain and the United States in 1898 the Spanish Government accorded a délai of five days to American ships in Spanish ports to depart, but did not expressly prohibit their subsequent capture on the high seas, nor did it provide for the entrance and departure of American ships which had sailed for Spanish ports before the war. The American Government granted a délai of thirty days (from April 21 to May 21) to Spanish vessels in American ports. The American proclamation further exempted Spanish vessels which prior to April 21 (the date of the beginning of actual hostilities) had sailed from a foreign port bound for a port in the United States, and allowed these to enter such port, discharge their cargoes, and depart without molestation. Under an interpretation by the Supreme Court this liberal privilege was extended to cover the case of a Spanish merchant vessel which had sailed from an American port before the beginning of hostilities. During the Russo-Japanese War, the Japanese Govern-

⁷See the texts of the French decree and the British Order in Council, in International Law Situations, 1906, pp. 48–49.

⁸ Ibid., Bonfils, sec. 1399.

⁹ Bonfils, sec. 1399.

¹⁰ The Buena Ventura, 175 U.S. 388. The American proclamation, however, ex-

ment granted a délai of seven days to Russian vessels in Japanese ports, and accorded to Russian vessels which had sailed for a Japanese port before the outbreak of the war the right to enter, discharge their cargoes, and depart. But the Russian Government accorded a délai of only forty-eight hours to Japanese vessels in Russian ports, and granted no privilege of entrance and departure to Japanese vessels which had sailed for Russian ports before the beginning of hostilities.

Thus it will be seen that during the more important wars since 1854 in which the belligerents were maritime Powers, enemy ships in belligerent ports had been allowed a certain period to depart, and in most of them, enemy ships encountered on the high seas bound to or from such ports in ignorance of hostilities had been allowed to enter, discharge their cargoes, and depart freely. As to the extent of the *délai* accorded, however, there was no uniform practice, and in some instances, as that of Russia in 1904, the period was much restricted. Moreover, the privilege thus accorded was considered as an act of grace and not a right, and each belligerent remained free to grant the favor or withhold it at pleasure and, if it was granted, to limit and restrict it under such conditions as it saw fit.

The desirability of a general, if not an obligatory, rule governing the practice was felt by many publicists, and at the Second Hague Conference of 1907 the matter was the subject of lengthy discussion. Proposed rules were submitted to the conference by the delegations of Russia, The Netherlands, France, Sweden, and Great Britain, and views were expressed by the delegates of various other governments. ¹¹ There was a general agreement that a reasonable period should be allowed vessels in enemy ports to depart freely and that those met on the high seas unaware of the existence of war should be allowed to enter, discharge their cargoes, and depart, without molestation, but it was not thought de-

pressly withheld the favor thus granted, to Spanish ships having on board enemy military or naval officers, contraband goods, dispatches from or to the Spanish Government, or coal, except such as might be necessary for the voyage. See the cases of the Panama, 175 U. S. 535, and the Pedro, 75 U. S. 354. Cf. Benton, International Law and Diplomacy of the Spanish American War, pp. 130 ff. and 166 ff.

¹¹ For an analysis of the several proposals submitted, see Higgins, The Two Hague Peace Conferences, p. 302, and International Law Situations, 1910, pp. 68–70.

sirable to prescribe a fixed rule as to the duration of the délai to be accorded, for, as Webberg remarks. 12 the speed with which loading or unloading is carried out differs greatly in various ports, and, besides, it may be necessary for one vessel having a larger voyage before it, to lay in a special store of victuals, thus requiring a longer period, while another may be able to load and get away in a much shorter time. Concerning the question as to whether the privilege should be regarded as a right or a favor, there was a difference of opinion. A majority of the delegates, among them those of the United States, Germany, and Russia, felt that the privilege had been so long and generally observed that it had acquired sufficient international force to be treated as an obligation rather than an act of grace, but to this view the delegates of Argentina, France, Japan, and especially those of Great Britain were opposed. Each belligerent, according to their view, should be left at liberty to act as its own national interests might require. On account of this opposition, the final agreement of the conference was a compromise which on some points represents reaction rather than progress, and secures to commerce a less favorable position than it enjoyed before. The results of the discussion were embodied in a separate convention (VI) signed October 18, 1907, the more important articles of which are the following:

ARTICLE 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination, or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ARTICLE 2

A merchant ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, can not be confiscated.

The belligerent may only detain it, without payment of compensation but subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

12 Capture in War on Land and Sea, p. 55.

ARTICLE 3

Enemy merchant ships which left their last port of departure before the commencement of war, and are encountered on the high seas while still ignorant of the outbreak of hostilities can not be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such cases provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war.

ARTICLE 4

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

Article 5 provides that the convention shall not apply to merchant ships whose construction shows that they are intended for conversion into war ships, ¹⁸ and Article 6 stipulates that the convention shall not

13 This article was inserted at the instance of the British delegate, Lord Reay. It was evidently aimed at subsidized steamers constructed according to special designs which make them easily convertible into cruisers, and in pursuance of an arrangement between the subsidizing government and the owner. The article was opposed by the German delegate, Herr Kriege, who contended that there were no steamships which were not capable of being converted into war vessels or which could not be used for mine laying or other subsidiary naval operations. The proposed article might therefore be so interpreted as to exclude from the benefit of the délai de faveur all ships except sail boats. Actes et Documents, p. 1033. Compare also Wehberg, Capture in War on Land and Sea (Trans. by Robertson) p. 59, who observes that "every steamer of high speed can also be employed as an auxiliary cruiser, and every vessel, at any rate, in mine-laying. In any case precisely the most valuable vessels, which are often the pride of the whole communities—one has only to think of the splendid four-screw steamer, Lusitania, of the Cunard Line—are thereby exposed to the whole barbarity of the law of prize. Holland and Austria endeavored in vain to bring about a compromise by which all ships which had been granted time to clear might not again be used by their native country for war purposes.

"The extent, however, to which views differ as to whether a ship is to be regarded as an auxiliary cruiser or not is shown by the fact that England then declared that it had only five merchant ships which were intended beforehand for fighting purposes. On the other hand, the latest 'Naval Almanac' gives a total of 27 such English auxiliaries for the end of 1908."

Compare also Hall (International Law, 5th ed., p. 616), who remarks that while

apply except between the contracting powers and then only if all the belligerents are parties.

The purpose of the convention as declared in the preamble was to "insure the security of international commerce against the surprises of war" and to "protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities."

As finally adopted, the convention imposes no obligation upon belligerents to allow délais de faveur, but merely affirms the desirability thereof. They are therefore free, as before, to accord or withhold the privilege, and if it is denied there is no legal ground for complaint. But under ordinary conditions a regard for national interests is likely to insure the granting of it and at the outbreak of the present war it was generally offered upon condition of reciprocity.

The most important change in the old practice as introduced by the convention is the abolition of the right of confiscation of both ships and their cargoes, and the substitution of detention with the obligation of restoration at the close of the war. But both ships and cargoes may be requisitioned or destroyed upon payment of compensation, provided that in case of destruction adequate provision is made for the safety of all persons on board. Furthermore, the convention exempts from capture during the course of their return voyage ships allowed to depart, and also those having sailed from their last port of departure before the outbreak of war and which are encountered at sea while the master is still ignorant of the existence of a state of hostilities—an immunity not always allowed in the past. The American delegation objected to the form of the latter immunity because it was conditioned upon the ignorance of hostilities on the part of the master—a condition which was declared to be no part of the existing practice and which largely neutralized the apparent benefits of the convention. For this and other reasons which put commerce in a less favorable situation than before, the

experts are perfectly able to distinguish vessels built primarily for warlike use, it is otherwise with many vessels intended primarily for commerce. "Mail steamers of large size are fitted by their strength and build to receive without much special adaptation, one or two guns of sufficient calibre to render the ships carrying them dangerous cruisers against merchantmen."

American delegation refused to sign the convention, and recommended that it be not ratified by the Government of the United States.¹⁴

Among the belligerents in the present war, Bulgaria, Italy, Montenegro, Serbia, and Turkey have not ratified the convention or any part of it. In accordance with Article 6, therefore, its terms are not legally binding on any one of the belligerents. Germany and Russia reserved their ratification of Article 3 and paragraph 2 of Article 4, which substitute detention in the place of confiscation in respect to vessels (and their cargoes) encountered on the high seas in ignorance of hostilities. The reason assigned for their reservations was that the above mentioned provisions established an inequality between states by imposing burdens upon those which, lacking naval stations in different parts of the world, are not always in a position to take into a home port the vessels which they seize and which therefore they might be under a necessity of destroying. In the latter case, they would be compelled to indemnify the owners of the vessels destroyed. 15 In consequence of Germany's refusal to ratify the two provisions mentioned, German merchant vessels which were encountered by British and French cruisers and which had sailed from their port of departure before the outbreak of the war and were still ignorant of the existence of hostilities, are not entitled to the benefit of these provisions and have been confiscated instead of detained by both British and French prize courts during the present war. On the other hand, the German Government is under no legal obligation to make compensation for the British and French vessels which were encountered under similar circumstances and destroyed by German cruisers on the high seas. It has turned out in practice, however, that Germany's loss in consequence of her reservation of the two provisions mentioned has greatly exceeded the gain, for while few British or French vessels have been encountered on the high seas by German cruisers under the circumstances set forth in Article 3, a considerable number of German ships have been encountered by British and French cruisers, and instead of being detained have been condemned and confiscated, as stated above.

· We may now turn to a consideration of the practice during the present

¹⁴ See their report in Senate Document No. 444, 60th Congress, 1st Session, p. 38. See also Dupuis, op. cit., p. 169, for a similar criticism.

¹⁵ Actes et Documents, Vol. I, p. 235; Vol. II, p. 954.

war. It does not appear that in any case was an embargo laid in anticipation of the war upon merchant vessels in port prior to the outbreak of the war. Nevertheless Sir Edward Grey in a dispatch of August 2. 1914, to Sir E. Goschen, British Ambassador at Berlin, stated that he had received information that the authorities at Hamburg had detained certain British merchant vessels in port for causes unknown to him, and he requested that a demand be made for their immediate On the same day the British Ambassador replied that he had been informed by the German Secretary of State for Foreign Affairs that orders had been given to allow British ships at Hamburg to proceed on their way. The Secretary of State added, however, that this must be considered as a special favor to the British Government as no other foreign ships had been allowed to leave. The reason alleged for the detention was that mines were being laid and "other precautions" were being taken.¹⁷ At the outbreak of the war the German Government proposed to the Governments of Great Britain, France, Russia, and Belgium 18 that days of grace be allowed to merchant vessels in enemy ports to depart unmolested. By a decree of the French Government dated August 4, 1914, German merchant ships found in French ports since August 3 at 6:45 p. m., or entering since that date in ignorance of hostilities, were accorded a délai of seven days in which to depart freely, and after being furnished with a passport would be allowed to return to their port of destination or to such other port as might be designated by the maritime authorities of the French port in which they might be found. By a decree of August 13 a similar favor was granted to Austrian and Hungarian ships found in French ports prior to midnight of the previous day. In consequence, however, of Germany's reservation of Article 3 and paragraph 2 of Article 4 of the above men-

¹⁶ British White Paper, No. 143.

¹⁷ Ibid., No. 145.

¹⁸ On the night of August 4, 1914, the British Secretary of State for Foreign Affairs received the following notice from the German Ambassador: "The Imperial Government will detain merchant vessels flying the British flag and which are interned in German harbors, but will liberate them if the Imperial Government receives a counter undertaking from the British Government within 48 hours." A similar notice was handed to M. Viviani, President of the Council, on August 3 at the time of the declaration of war against France.

tioned Hague Convention the benefits accorded by the French decree were not to apply to German ships which had left their last port of departure before August 3, 1914 at 6:45 p.m., and which might be encountered on the high seas in ignorance of hostilities. Nor was the benefit to apply to ships whose construction, armament, or equipment indicated that they were "susceptible" of being transformed into warships or for the public service. In case such ships were carrying mails, all bags of mail and parcels aboard would be expedited as rapidly as possible to their destination. 19 On the same day, namely August 4, a British Order in Council was issued by which it was provided that in the event one of His Majesty's principal secretaries of state should be satisfied by information reaching him not later than midnight on August 7 that the treatment accorded to British merchant ships and their cargoes which at the outbreak of hostilities were in the ports of the enemy or which subsequently entered them, was not less favorable than the treatment accorded to enemy merchant vessels by the British Order in Council, German merchant vessels under 6000 tons in burden which at the date of the outbreak of hostilities were in any British port, should be allowed until midnight on August 14 (a délai of ten days) for loading and departing. On August 5 a copy of this Order in Council was communicated to the American Ambassador in London, who had taken charge of German interests in England, with a request that he inquire of the German Government whether it was prepared to accord reciprocity of treatment to British vessels. On August 7 a communication was received from the American Embassy stating that the American Minister at Stockholm had received a telegram from the American Ambassador at Berlin inquiring whether the British Government had issued a proclamation allowing enemy ships to leave British ports before midnight of August 14, saying that if this was so, Germany would issue corresponding orders. It did not appear, however, that the telegram was a reply to the message which had been transmitted to Berlin. Upon inquiry at the American Embassy shortly before midnight on August 7, it was ascertained that no further communication had been received from Berlin. The Lords Commissioners of the Treas-

¹⁰ The text of the French decree may be found in the Revue Générale de Droit International Public, Jan.-June, 1915, Documents, pp. 9-10.

ury and the Lords Commissioners of the Admiralty were therefore notified by Sir Edward Grey that Articles III to VIII of the Order in Council relative to the treatment proposed to be accorded to enemy merchant ships in British ports at the outbreak of hostilities or subsequently entering them would not come into operation. Every effort, says the Attorney-General in his argument in the case of the Chile, was made between August 4 and August 7 to obtain satisfactory assurances from the German Government that reciprocity of treatment would be accorded, but no information was received and therefore the privilege of departure could not be accorded to German vessels. It is said that the British proposal was not received in Berlin until the morning of August 8, the day after the expiration of the time limit set by the British Order in Council.²⁰ British vessels in German ports and German vessels in British ports were consequently detained.²¹ But the Austro-Hungarian Government agreed to accord reciprocity of treatment to British vessels, and consequently the merchant ships of Austria and Hungary were allowed to depart freely, and the Austro-Hungarian Government having ratified the Hague Convention without reservation, Austrian and Hungarian vessels met at sea in ignorance of hostilities and bound for English ports were allowed to enter, discharge their cargoes, and leave without molestation.

Upon the outbreak of war between Japan and Germany, the Japanese Government granted a délai of two weeks to German vessels in Japanese ports to discharge their cargoes, take on new cargoes of non-contraband goods, and to depart freely for designated ports. A like favor was accorded to German vessels which entered Japanese ports in ignorance of the outbreak of hostilities, and to those met by Japanese warships on the high seas bound for Japanese ports in ignorance of hostilities. These favors, however, were all conditioned upon reciprocity of treatment by Germany. By a proclamation of the Governor-General of Canada, dated August 5, 1914, a dêlai of nine days was accorded enemy ships in Canadian ports and the privilege of entering, discharging cargoes

 $^{^{20}}$ Huberich, The Prize Code of the German Empire as in Force July 1, 1915, p. XXI.

²¹ Belgium accorded three days of grace to German ships in Belgian ports at the outbreak of war, and presumably Germany accorded reciprocity of treatment.

and of departing freely was allowed enemy ships which had cleared from their last port of departure before the declaration of war and entered a Canadian port in ignorance of hostilities. But the favor was conditioned upon the receipt by the Governor General of information that notice had reached his Majesty's Government by midnight of August 7 that it was the intention of the enemy government to accord reciprocity of treatment to British vessels and their cargoes. The Governor General received a dispatch from the British Secretary of State for the Colonies on August 19 stating that no information had been received from the German Government by midnight of August 7 of its intention to accord reciprocity of treatment to British vessels. Accordingly, German vessels in Canadian ports at the outbreak of the war were detained, and those encountered on the sea bound to or from Canadian ports in ignorance of hostilities were captured and condemned as good prize.

The Turkish Government not having ratified the convention, its benefits were not accorded to Ottoman ships in British ports.²³

The first case involving the status of merchant vessels in enemy ports at the outbreak of the war was that of the *Chili*, a German barque seized at Cardiff on August 5, a state of war having been declared to exist between Great Britain and Germany as from 11 p. m. on August 4. The case was heard by Sir Samuel Evans, president of the probate, divorce and admiralty division of the English High Court. As it was the

22 The privilege, however, was not accorded to cable ships, or sea-going ships designed to carry oil fuel, to ships whose tonnage exceeded 5000 tons burden or whose speed was fourteen knots or over. Enemy merchant ships allowed to depart were to be provided with a pass indicating the port to which they were to proceed and the route they were to follow. Officers and members of the crew, if of enemy nationality, were required to give an undertaking in writing that they would not after the conclusion of the voyage for which the pass was issued engage during the continuaance of hostilities in any service connected with the operation of war. See "Copies of Proclamations, Orders in Council, and Documents Relating to the European War, compiled by the Secretary of State for Canada, 1915," pp. 20-24, for the text of the above mentioned Order in Council. By a Canadian Order in Council of August 14, 1914, similar privileges were accorded to Austrian and Hungarian ships provided information were received not later than midnight of the following day, of the promise of reciprocity of treatment (ibid., p. 45). Satisfactory information was received, and the privileges of the order in Council were extended to Austrian and Hungarian ships (ibid., p. 57).

²⁵ Proclamation of August 5, 1914. See text in copies of Proclamations, Orders in Council and Documents, issued by the Canadian Government, p. 147.

first case to be tried in a British prize court in sixty years ²⁴ the proceedings attracted much interest on the part of the bar and the general public. ²⁵ Sir John Simon, the Attorney General, took occasion to give a résumé of the history of the prize court and to call attention to the changed conditions under which the prize jurisdiction was exercised to-day. ²⁶ Then turning to the facts in the case of the *Chili*, he asked that

²⁴ The last prize court had been held by Dr. Lushington during the Crimean War.
²⁵ "A simple ceremony," says the London *Times*, "characterized the opening of the proceedings. At 11 o'clock the judge entered the court, preceded by the marshal of the admiralty bearing the ancient and beautiful silver oar which was placed upon rests before the judge's desk."

The long interval of time which had elapsed since a prize court had sat necessarily involved, he said, great changes. There were obviously very great changes in the conditions which would have to be considered, and in the difficulties which would have to be solved by His Lordship. The almost universal substitution of other means of motion on the sea for the use of sails was a very small part of the whole of the changed conditions. When Dr. Lushington sat during the time of the Crimean War, and still more when Lord Stowell sat during the Napoleonic Wars, it could not have been contemplated that a time would come when it would be possible to communicate with a ship on the high seas by means of the marvellous development of science which was now regarded almost as a matter of course. Another change was that the office of King's Advocate had disappeared.

He understood that it was essential in a prize case that the claim for the condemnation of a prize should be a claim that it should be condemned to the Crown. It seemed to be popularly supposed that when a prize had been captured, the prize, if condemned, belonged to the captors. He did not think that that was an accurate way of stating what took place. It was true that under the old practice the captors applied for a condemnation of the ship, but if a decree of condemnation was made it decreed a good and lawful prize to the Crown, and it was by a subsequent act of the Royal judgment and discretion that the proceeds of the prize might be distributed among those immediately responsible for its capture. It had already been announced that in the present war some modification of that principle was intended to be introduced. Under modern conditions it would be wrong that only those particular members of the sea forces who took part in the capture of an enemy ship should be the persons to be considered, if the Crown in its judgment thought right to distribute the proceeds of the prize. Some of the most important and gallant services in the navy were performed by men who never in any circumstances could have anything to do with the capture of prizes. The submarine service on the one hand, and those serving upon a dreadnought, on the other, would in the ordinary course have no part in the taking of prizes. The rule formerly prevailing would, therefore, be modified, but the principle, that if a prize were taken and condemned it would be condemned to the Crown, was the old principle which would be carried out during the present war.

It was correct to say that an English judge who administered the law in a British Prize Court administered "the course of admiralty and the law of nations." That

an order be issued for its detention since the owners were not entitled to the benefit of the délai de faveur provided for in Convention VI of the Second Hague Conference, his Majesty's Government not having received within the prescribed period information from the German Government of Germany's intention to accord reciprocity of treatment. In reply to a question raised by the court as to whether it was bound by the Hague Convention in view of the fact that not all the belligerents had ratified it as required by Article 6, the Attorney General replied that in his opinion the court was bound by its terms since it was an international contract, and stood in the same position as the Declaration of Paris. The court also asked the Attorney General what was the meaning of Article 2. He replied that he understood it to mean that at the end of the war a merchant vessel detained in accordance with the terms of the article would be restored without compensation. He did not understand that in the meantime title to the property would pass to the Crown and then back to the owners upon the return of peace. Consequently, if the ship were lost during the period of detention, the government would not be liable for compensation.

was the old form of commission to the court. Looking back at the early reports these words were to be found, and there could be no question that the jurisdiction, which His Lordship was exercising, was essentially the same, both with regard to its nature and its ambit, as was exercised by the famous predecessors of His Lordship who had sat in a Prize Court.

The second branch of this law which would be applied in this court was what had been called "the common law of nations." This depended on the teaching and learning of the civilians and other great authorities, and on special treaties or international arrangements entered into by the Great Powers of the world.

One of the most famous of such international agreements was that contained in the Declaration of Paris, 1856, which was entered into immediately after the Crimean War. He believed that the British Prize Court had never had to apply the Declaration of Paris in a prize case, but pursuant to that arrangement a neutral flag would be a protection for enemy cargo so long as that cargo was otherwise not open to challenge on the ground of a breach of the law as to contraband or the law of blockade. He was reminded by his learned friend, Dr. Holland, that although the Declaration of Paris was entered into after the Crimean War, by consent, this country acted on its principles during the war. Since that time the most important additions to the law of nations were those which arose from a series of conventions entered into by the Second Peace Conference at The Hague in 1907, by which the civilized world made efforts to modify the code applicable in war time. He apprehended that these conventions, in so far as they had been agreed to by the contracting parties, would be regarded by His Lordship as grafted upon the law of nations.

The court in its judgment expressed regret that circumstances had made it necessary that a prize court should sit within the British realm after the happy lapse of sixty years. Adverting to the suggestion of the Attorney General that Article 2 might be dependent upon Article 1, and therefore would have no application, since no days of grace had been agreed upon, the court remarked that it might be well founded, but a decision on that point was at present not essential, though it might be necessary later in determining what were the full rights of the Crown. Likewise, the question as to whether an enemy ship owner had a right to appear did not have to be decided, and since the affidavit did not specify who the owners were and being therefore insufficient, the court struck out the appearance entered for the ship owners. The judgment of the court was that the ship had been lawfully seized as a droit of admiralty, and should be detained until a further order was issued by the court.27 In numerous similar cases involving the status of enemy vessels in English ports at the outbreak of the war, the Prize Court issued decrees of detention instead of condemnation.²⁸

The case of the *Marie Glaeser*, decided September 11, 1914, ²⁹ involved the application of Article 3 of the Hague Convention, which exempts from confiscation enemy merchant vessels which left their last port of departure before the outbreak of war and were encountered on the high

²⁷ See the full report of the case in Trehern, British and Colonial Prize Cases decided during the Present War, Part I, pp. 1–12. The order of detention issued in this and like cases did not of course definitely determine the rights of the Crown. These rights could only be finally determined when it was known what treatment was being accorded by Germany to British ships in German harbors. Orders of detention might therefore be subsequently superseded by orders of condemnation. The Law Magazine and Review of November, 1914, p. 76, called attention to the fact that decrees of detention were unknown to prize procedure, and the editor suggested that it would have been better if, instead of making such orders the cases had been simply adjourned, since there might be some question as to whether a decree of detention once made could be superseded by a decree of condemnation in the future.

²⁸ Thus at its sitting on Sept. 11, 1914, orders of detention were made by the court in the cases of 16 vessels which, like the *Chili*, were in British ports at the outbreak of the war. These cases are reported in Trehern's collection cited above, parts I–IV. The judgments but not the briefs of counsel in some of the more important of these and other cases to be discussed in this article may be found in the American Journal of International Law for April, 1915 (pp. 528–535) and July, 1915 (pp. 739–759).

²⁰ Trehern, Pt. I, pp. 38 ff.

seas while still ignorant of the existence of hostilities. This was a German merchant vessel which left a British port some hours before the declaration of war by Great Britain against Germany and was captured at sea on August 5 while still ignorant of the outbreak of hostilities. In consequence of Germany's reservation of Article 3, the owners of the ship were not entitled to the benefit of the favor which it allows, and the ship was therefore condemned as good prize and not merely ordered to be detained, as was done in the case of the *Chili* which came under Articles 1 and 2 of the convention. The same decision was reached in the case of the *Perkeo*, a German barque which sailed from New York for Hamburg on July 14 and was captured off Dover on August 5 while the master was still ignorant of the outbreak of hostilities.

In the case of the Möwe 30 the Prize Court was called on to decide the meaning of the term "port" as used in the Sixth Hague Convention. The Mowe was a German merchant vessel which was captured on August 5, 1914, at a place in the Firth of Forth which was not within the limits of a "port" in the usual commercial sense, yet within the "port" of Leith for customs purposes. The owners claimed that the vessel was in a port and not on the high seas at the time of capture, and could not, therefore, be condemned, but could only be detained in accordance with the Hague Convention. But the court held that the word "port" as used in Articles 1 and 2 of the above mentioned convention had a special and restricted meaning, namely, a place where cargoes are loaded and unloaded, and did not comprehend the limits of a customs district. In short, it did not mean the fiscal port. Even assuming that the vessel was captured in territorial waters, it did not follow that it was in port. Where the Hague Convention, said the court, intended to deal with territorial waters, the words les eaux territoriales were employed in contradistinction to les ports (See, for example, Convention XII, Articles 3 and 4, and Convention XIII, Articles 2, 3, 9, 10, etc.). The court also pointed out that the words "encountered on the high seas" in Article 3 of Convention VI are not an accurate rendering of the French rencontrés en mer. In fact, where it was intended to refer to the high seas the words en pleine mer or en haut mer were used. Having been "encountered at sea" within the meaning of Article 3 of the Convention, the ratification

30 Trehern, Pt. I, p. 60.

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of which Germany had reserved, the ship was not entitled to the benefits of the said article and it was therefore condemned as lawful prize.

In this case the prize court finally disposed of the question of the right of an enemy subject to appear before the court as a claimant. This question had been raised in the cases of the Chili and the Marie Glasser, but a decision on the point was not necessary to the judgment and on account of the insufficiency of the affidavits and because no specific circumstances were shown which would entitle the enemy to appear, the appearance was struck out. In the present case, however, the owner set up the plea that he was entitled under the terms of the Hague Convention to appear and resist condemnation of his ship. Without passing definitely on the question of whether the Hague Convention was legally binding on the court, since that was not necessary to the judgment, Sir Samuel Evans announced that in pursuance of the inherent power of the court to regulate and prescribe its own rules of practice, except where fettered by enactment, he would direct that whenever an alien enemy claimed a privilege or immunity under any of the Hague Conventions of 1907, he would be allowed to appear as a claimant and argue his case before the court, provided his claims were sufficiently stated in the affidavit which the Prize Court Rules of 1914 required.⁸¹

In the case of the Belgia ³² decided by the British Prize Court on June 14, 1915, a somewhat similar question as that raised in the Möwe was presented to the court. The Belgia was a German steamer which on August 3, while bound from New York to Hamburg, having heard by wireless that war had broken out between France and Germany, deviated to the Bristol Channel, ostensibly to get coal, but in fact to escape possible capture by French warships in the English Channel. War between Great Britain and Germany being imminent, the port authorities refused admission to the vessel, and directed her to an anchorage farther out in the channel. Next morning, August 5, a state of war having supervened between Great Britain and Germany since eleven o'clock on the previous evening, the vessel was seized and taken into Newport. The

³¹ Trehern's Prize Cases, Pt. I, p. 73. The question of the right of enemy subjects to sue and the practice followed during the present war will be more fully discussed in another paper.

³² Ibid., Pt. III, p. 303.

owners claimed that the vessel was seized either within the limits of the port of Newport or while entering the port, and could not, therefore, under the terms of Articles 1 and 2 of the Sixth Hague Convention, be condemned. The word "port" in an international convention, they argued, does not have the same meaning that it has in a charter party or other commercial document, and should be given the widest interpretation. They also pointed out that the port authorities exercised jurisdiction over the waters where the Belgia had been ordered by the harbor master to anchor and where it was subsequently captured. Even if it be assumed that she was not actually "in" the port, she was "entering" and therefore came within the terms of Article 1 of the Hague Convention. The court, however, held that the capture took place at sea at a point five miles from the bell buoy which marked the mouth of the River Usk, and three and three-fourths miles from the coast. Furthermore, the court doubted whether the Belgia belonged to the class of vessels which was intended to be protected by the convention, the purpose of which as declared in the preamble is to insure the security of international commerce, and which had no application to the case of a vessel seeking a neutral port for the purpose of avoiding capture. Being captured on the high seas and not in port, the vessel was not entitled to the benefit of Article 3 of the convention because of Germany's reservation of it, and was, therefore, condemned and ordered to be sold.

In the case of the Erymanthos³⁸ essentially the same question was raised before His Majesty's commercial court at Malta. This vessel belonged to the Deutsche Levante Line of Hamburg. It arrived off Malta on August 5 in ignorance of the outbreak of hostilities between Great Britain and Germany, and on approaching the harbor was ordered by a warning vessel stationed in the offing to go to an examination anchorage in St. Paul's Bay, in pursuance of a proclamation issued by the governor on August 3, respecting the location of ships in the waters of Malta. While proceeding to the place of anchorage to which it had been ordered, it was overtaken by two British destroyers and directed to follow one of them into St. Paul's Bay, where it was left in charge of one of them as a prize of war.

The owners claimed that under the terms of the Hague Convention

32 Trehern's Prize Cases, Pt. III, p. 339.

relative to the status of enemy merchant ships at the outbreak of hostilities, the vessel was liable only to detention and must be restored at the close of hostilities. Was the ship "in" an enemy port or "entering" an enemy port, or was it "encountered" on the high seas, in the sense in which those expressions are used in Articles 1 and 2 of the Hague Convention? The owners affirmed that it was entering an enemy port at the time it was captured, and if it had not actually entered it was due to the action of the port authorities who ordered it away. Following the interpretation of the prize court at London in the case of the Möwe referred to above, the court at Malta held that the word "port" as used in the convention must be construed in its usual limited popular or commercial sense as a place where ships are in the habit of coming for the purpose of loading and unloading, embarking or disembarking a place from which, if days of grace had been agreed upon, the steamer could be said to depart (sortir). St. Paul's Bay, where the "material capture was it its final stages" carried out, was not a port in that sense, but a place of anchorage for examination purposes at a distance of some miles from the real port of Malta. The vessel was not, therefore, in a port at the outbreak of hostilities, nor was it entering the port in ignorance of hostilities. The fact that it was prevented by the local authorities from entering did not affect the case. No government is bound to allow an enemy ship to enter one of its ports. The purpose of the Hague Convention is only to exempt from confiscation ships which actually succeed in entering in ignorance of hostilities, or which are allowed to enter. If they are not permitted to enter, they have no lawful claim to immunity. This interpretation undoubtedly worked a hardship upon the owners of German steamers, but the German Government had reserved its ratification of Article 3, which would have saved the Erymanthos, and it must therefore bear the responsibility.

The case of the Bellas 84 decided by the Exchequer Court of Canada

³⁴ Trehern's Prize Cases, Pt. I, p. 95. Judge Newcombe prefaced his opinion in this case by referring to the fact that it was the first occasion in one hundred years in which a prize court had sat in British North America. He then gave a résumé of the history of the prize court in Canada, quoting from Stewart's Reports of the Admiralty Decisions of the Province of Nova Scotia, published in 1813. The prize court in which these decisions were given was established in 1801, and the first judge of the court was Dr. Alexander Croke. Under the authority of the Imperial Prize

on December 15, 1914, involved the status of a German merchant ship in a Canadian port at the outbreak of war between Great Britain and The Bellas, while loading a cargo at Port Rimouski on August 5, 1915, was seized as a prize by the collector of customs. By an order of the Governor General in Council of the same date, corresponding substantially with the Imperial Order in Council of August 4, it was provided that if information was received by His Majesty's Government not later than midnight on August 7 that the treatment of British merchant ships and their cargoes in an enemy port was not less favorable than the treatment accorded to enemy merchant ships under Article 2 of the order, enemy merchant ships in Canadian ports at the outbreak of hostilities should be allowed days of grace in which to load or unload their cargoes and depart. If this information were not received, enemy ships with their cargoes should be liable to capture. The information was not in fact received, and, following the decision of the Prize Court at London in the case of the Chili, the court issued an order for the detention of the Bellas and her cargo until further orders. The claim of a Portuguese subject who alleged that the ship had been transferred to him while she was on the high seas, and before the outbreak of the war, was dismissed on the ground that it was not a bona fide transaction, there being no proper bill of sale and no registration under the Portuguese flag until a date subsequent to the seizure of the vessel.

The cases of the Gutenfels, 35 the Barenfels, 36 the Marquis Bacquehem, 87 the Achia, 38 the Pindos, 39 and the Concadero 40 decided by the British Prize Court at Alexandria in January, February, and March, 1915, involved the status of enemy vessels in Egyptian ports at the outbreak of the war and which refused to take advantage of permission

Courts Act of 1894, the Exchequer Court of Canada by an Admiralty warrant of April 10, 1910, was authorized to exercise prize jurisdiction. By a proclamation of the Governor General of Aug. 22, 1914, the British Prize Court Rules approved by the King in Council on Aug. 6, 1915, were put into operation in Canada.

³⁴ Trehern's Prize Cases, p. 102.

³⁶ Ibid, p. 122.

⁸⁷ Ibid, p. 130.

^{*8} Ibid, Pt. II, p. 243.

³⁹ Ibid, Pt. II, p. 248.

⁶ Ibid, Pt. III, p. 390.

to leave, which permission in some cases was accompanied by the offer of a safe conduct.

The Gutenfels was a German steamship which arrived at Port Said on August 5, 1914, ignorant of the outbreak of hostilities, and although no safe conduct was offered her, she was at liberty to leave at any time during a period of two months. On October 13, she was boarded by an officer of the Egyptian army, and escorted out to sea, when she was seized as a prize by a British cruiser at a place some three or four miles out of the port, and taken to Alexandria. The procurator asked the court to condemn the ship on the ground that the court could not go behind the seizure by the British cruiser; it was, he maintained, a case of an enemy ship cognizant of the existence of war, encountered and captured on the high seas, and in consequence of Germany's reservation of Article 3 of the Hague Convention, she was liable to condemnation and not mere detention. But the court rejected this construction. In view of the fact that the ship had been forced by the British authorities to leave, the court was justified in looking behind the actual circumstances of the seizure by the British man-of-war on the high seas, and in inquiring into the events which led up to the capture. In its opinion the court said:

There is no question here of the infraction of the sovereignty of a neutral Power. We must treat the case as if it were that of a German ship anchored in Liverpool or Cardiff at the outbreak of the hostilities, boarded there by officers of the Crown, taken by them beyond the territorial limits of Great Britain, and there handed over by arrangement to a British man-of-war. To state the case in these terms is to indicate its hollowness. What court, with any self-respect, would decline to go behind the so-called capture on the high seas? I want no authority to justify me in brushing aside such sophistries, though authority on the subject is not lacking. The case of *Twee Gebroeders* (No. 1) (1800) 3 C. Rob. 162; I Eng. P. C. 286) proves conclusively that it is the duty of a British Prize Court to examine all the circumstances that attend or lead up to capture.

Turning to the contention of the claimants that the ship should be restored on the ground that Port Said was a neutral port whose neutrality had been guaranteed by the Suez Convention, the court proceeded to examine at length the history and nature of this convention and the status of enemy ships which had taken refuge in Port Said. The

conclusion was that it was not the intention of the convention to grant an indefinite refuge to ships in the canal or in the ports auxiliary thereto, but only to insure a free and uninterrupted passage. Ships have the right to free passage, it was said, but when they abandon the intention of going through, they cease to have any right under the convention. The Gutenfels was in exactly the position that she would have been in had she been in the port of Alexandria. Since the outbreak of war, Egypt could not be regarded as neutral territory, and the Gutenfels having been taken possession of by Egyptian officials and escorted out to sea at the instigation of Great Britain and there seized as prize by a British cruiser, must be considered as having been captured in a belligerent port. As in the case of the Chili, an order was issued for its its detention.

The Barenfels, likewise a German steamer, arrived at Port Said on August 1, four days before the outbreak of the war and continued to remain, using the port as a place of refuge. She was at liberty to leave at any time from August 14, to October 13, although no safe conduct was offered her. She was then boarded by Egyptian officers, taken out to sea, and on October 16 was handed over to a British cruiser and taken to Alexandria for adjudication. Except for the fact that the Barenfels was already in Port Said at the outbreak of the war—a circumstance which for the purpose of the judgment was immaterial her case was not distinguishable from that of the Gutenfels. The procurator asked for an order of confiscation. Counsel for the owners, on the other hand, asked for an order of detention and restoration at the close of the war in pursuance of the provisions of the Hague Convention. The presiding judge and his associate, who dissented, both considered at length in separate opinions the question as to whether the court was bound by the Hague Convention, 41 and they were in agreement that it was so bound, but they disagreed as to the form which the order should take. The dissenting judge thought that an order of provisional detention as in the case of the Chili should be issued, subject

⁴¹ It was argued on behalf of the Crown that the Hague Convention did not apply since it contained merely an announcement of principles on which it was thought desirable to act, and could have no binding effect until applied by the laws of the country.

to the right of the Crown to apply for an order of confiscation in case it should later appear that Germany was not according reciprocity of treatment to British vessels. 42 The presiding judge, on the other hand, thought a definitive order of detention with a declaration that the ship. must be restored at the conclusion of hostilities should be issued. He thought final judgment should not be suspended "to see how Germany will act." It was quite true, he said, that in the last resort the rules of international law depend on reciprocity, and if it should later appear that Germany "had flagrantly broken the bargain respecting the treatment of British ships, I conceive that we would be justified in moulding our practice according to her example. But the mere suspicion that she will break her word ought not to affect our judgment now. Suspicion begets suspicion; and if one party does not legally perform its duties under an agreement, there is great danger that the pact may be broken by the other side, and a war of reprisals once begun, there is no setting a bourne to their extent."

The case of the *Marquis Bacquehem* ⁴⁸ is not distinguishable from those of the *Gutenfels* and the *Barenfels*, except in one curious particular. She was an Austrian steamer which, after having been stopped at sea by a British cruiser and informed of the outbreak of hostilities, was permitted to continue her voyage, and thinking that it was a neutral port she put into the Port of Suez, where she was subsequently taken to sea and, as in the case of the *Gutenfels* and other enemy ships, was handed over by the Egyptian authorities to a British warship and taken to

42 Judge Grain in his dissenting opinion gave the following reasons in support of his view: "Although we are sitting in this court for the purpose of listening to the evidence concerning certain facts and law, and to arguments of such facts and law, I cannot think that we are bound to shut our minds to certain reports and charges with regard to the breaking of treaties and conventions that are cognizant to the whole world. And it would be idle to pretend that at the present moment there are not grave charges being made against the German nation of having broken article after article of the Hague Conventions. These reports and charges may have no foundation, but, nevertheless, at the present moment they have never been adjudicated upon, and one can express no opinion as to their truth or otherwise. It may be said that because one party to a contract breaks that contract it does not free the other party. That may be so in ordinary case of law or affairs of life, but in the laws of nations connected with warfare, the rule of reprisals has always been recognized."

⁴ Trehern, Pt. I, pp. 130 ff.

Alexandria for adjudication. The circumstance which distinguished this case from the Gutenfels and the Barenfels was the fact that the Bacquehem was met at sea during the course of her voyage by a British warship, informed of the existence of war between England and Austria, and allowed to continue to proceed instead of being captured. The British warship had a right to capture the Bacquehem, but did not exercise it, apparently through misapprehension or misunderstanding of the terms of the Hague Convention. Instead of making for a neutral port and thus escaping, the Bacquehem preferred to go on to Suez, the port of which she entered with full knowledge of the war; and she could not therefore in strictness claim any benefit under Article 2 of the Hague Convention. The court took the view that had she received news of the outbreak of war from any other source than a British man-of-war, it would have had no other option than to condemn the ship, but it seemed unjust to take advantage of this incident and to hold that she was a vessel entering an English port with full knowledge of the war. The Hague Convention should be interpreted in a liberal spirit and enemy vessels given the benefit of the doubt. "A prize court," said Judge Cator, "is peculiarly the guardian of a nation's honor, and foreign countries will cite its decisions as indicating the temper of its people. An English prize court should certainly interpret the rules of international law in a broad spirit rather than a narrow one. England has accepted the principles of the Hague Conventions and the whole aim of these conventions is to ameliorate the sufferings and losses of individuals. It is our duty to give effect to that intention; and as a ship brought before a prize court by the Crown may in some sense be compared to an accused person, I think the Marquis Bacquehem should benefit by any doubt that may exist in the mind of the judge." It was therefore ordered that the ship be detained during the war and restored to her owners at its conclusion.

The Achaia was a German steamer in the port of Alexandria at the outbreak of war between Great Britain and Germany. She was offered a safe conduct to a neutral port with permission to leave at any time before August 14. The master declined to accept the offer, alleging that the pass was inadequate and professing to believe that Alexandria was a neutral port. After the days of grace had expired, the vessel was seized as a good prize. The only question involved in this case was

whether the pass that had been offered the vessel was adequate. Article 2 of the Sixth Hague Convention provides that enemy ships which are not allowed to leave in pursuance of Article 1 cannot be confiscated. The intention seems clear that if they are provided with a pass and allowed to leave they cannot be condemned. After an examination of the character of the pass that had been offered to the Achaia, the court pronounced it "quite adequate for its purpose," and the master having declined to avail himself of it and having chosen instead to remain in an Egyptian port, which could not be considered a neutral port, the vessel was liable to confiscation and an order to this effect was issued.

The Pindos was a German vessel which arrived at Port Said on August 1, 1914, and after the outbreak of war between Great Britain and Germany she was offered a safe conduct to Beirut, available until sunset on August 14; but the master did not accept it. On August 22 a second safe conduct was offered, but it, too, was declined. On October 15 the vessel was seized and brought to Alexandria as a prize. The case was not distinguishable from that of the Achaia, but counsel for the owners pleaded, in addition to the inadequacy of the pass, general grounds of equity. They argued that the master believed Port Said would be treated as a neutral port, that the action of the Egyptian authorities contributed to this belief, and that under these circumstances it would be inequitable to confiscate the ship. Both judges in their opinions admitted that there was great uncertainty in the minds of all parties, including the government, as to the actual status of the canal ports.44 The naval officer of the port, Captain Trelawny, stated that he thought they were neutral, though he denied ever having declared them to be so, and no promise had been made to the master of the Pindos. The court was of the opinion that no guarantee of immunity

⁴⁴ The Egyptian Government had issued a proclamation on August 6 granting special concessions to enemy ships in canal ports. Ships under 5000 tons burden were allowed until sunset on August 11 to leave. Nothing was said about granting safe conducts, but they were, in fact, offered to a number of vessels, good until sunset on August 14, among them the *Pindos*. On the latter date they were withdrawn, and the commander of the port was instructed to detain all enemy ships remaining in port. Later new instructions were issued and safe conducts were again offered which were available until August 22, but the masters declined to use them.

had been given, and therefore the plea of equity could not be admitted. The ship was therefore condemned.

The Concadoro was a registered Austrian ship which arrived at Port Said on August 18 in ignorance of the outbreak of hostilities. The master fearing that if he put to sea his ship would be captured and thinking Port Said would be considered a neutral port, he decided to remain there. He was offered a pass to a neutral port but refused to accept it. On October 22 the vessel was taken out to sea by the Egyptian authorities. On the following day a crew from a British cruiser was put on board and the ship, after being allowed to discharge her cargo at Port Sudan, was taken to Alexandria for adjudication. On behalf of the master and other owners of the vessel, it was contended that the pass offered was not genuine and did not conform to the requirements of Article 1 of the Sixth Hague Convention. It was also urged that the vessel was a "merchant ship which, owing to circumstances beyond its control was unable to leave the enemy port within the period contemplated," since the master did not have sufficient funds with which to buy coal and provisions to continue his voyage. Finally, it was pleaded that the master had invested the savings of his lifetime in the ship, and that as he had no desire to make war on anyone it was a great hardship that he should be deprived of his hard-earned savings. Regarding the lastmentioned point, the court expressed sympathy, but stated that the case had to be decided upon questions of law and not upon feelings of sympathy. As to the character of the pass, the court held that it would have been an adequate protection against capture had the master accepted it. Concerning the plea that the lack of funds constituted a case of force majeure within the meaning of Article 2 of the convention, the court thought such an interpretation would be stretching the meaning of the term and could not be admitted, all the more so because the consignees of the cargo had in fact offered the master a loan of £530 with which to pay port and other dues. An order for the confiscation of the ship was therefore issued.45

⁴⁵ In this connection, a decision of the Belgian Prize Court at Antwerp interpreting the meaning of the term "force majeure" as employed in Article 2 of the Hague Convention may be cited. At the outbreak of the war the Belgian Government gave three days of grace to a number of German vessels that were lying in the port of Antwerp.

In the cases of the *Oriental* and the *Germania* the question whether yachts seized in enemy ports at the outbreak of the war come within the terms of the Hague Convention No. VI. The *Oriental* was a yacht belonging to a Hungarian subject, and was seized at Cowes after the outbreak of the war between Great Britain and Austria-Hungary. The Austro-Hungarian Government having granted days of grace to British vessels, the *Oriental* was allowed a certain number of days to leave "as a matter of fairness due to the comity of nations," notwithstanding the fact that the immunities provided by the Hague Convention apply only to merchant vessels. For certain reasons the yacht was unable to avail itself of the privilege of departure. The prize court, therefore, condemned it and ordered it to be sold.

The Germania was a racing yacht owned by Gustav Krupp von Bohlen, a German subject, and was seized as a droit of admiralty at Cowes on August 6, two days after the outbreak of war between Great Britain and Germany. Germany, unlike Austria-Hungary, not having accorded days of grace to British ships to leave German ports, no days of grace were offered to the Germania in which to leave. Counsel for the owners argued that although not a merchant vessel, the Germania came within the spirit of the Hague Convention. Yachts were not specifically mentioned because it was not imagined that private property of this kind in a belligerent port at the outbreak of the war would be condemned. By the comity of nations since 1854 days of grace had been granted to merchant vessels and a fortiori a racing yacht which had come practically as a guest to the Cowes regatta should have been given an opportunity to leave. Sir Samuel Evans, however, refused to adopt this

As no advantages was taken of the délai de faveur, the vessels were seized. At the hearing before the prize court the owners, the North German Lloyd Company, set up the plea that the vessels were not liable to condemnation because "circumstances beyond their control" made it impossible for them to leave. The "force majeure" alleged consisted in the departure of the ship's officers and crews to rejoin the German forces conformably to the German order of mobilization, and the consequent inability of the company to procure fresh crews before the expiration of the period of grace allowed. But the court declined to admit the plea on the ground that the "force majeure" contemplated by the Hague Convention did not include inability to depart because of the abandonment of the ship by its officers and crews for the purpose of joining the forces of the enemy. Coleman Phillipson, International Law and the Great War, p. 79.

view and he issued an order of condemnation. The preamble to the Hague Convention, he said, showed that the purpose of the Convention, was to protect only ships engaged in commerce, and by its express terms the immunities which it provided applied only to merchant vessels (navires de commerce). Racing yachts could not be brought within these terms and the case must be decided on the basis of the law and not on the basis of any supposed spirit of the convention. During the course of the argument of the Solicitor-General as to whether the ship came within the terms of the Hague Convention, Sir Samuel Evans interrupted him to say that "assuming for the moment that the vessel is within the Hague Convention, I am not sure that a serious question may not arise some day whether Germany can complain of anything that is done in violation of the Hague Convention. An agreement, whether made between individuals or states, must be observed by both sides, and someone may have to determine whether Germany has so far adhered to the Hague Convention that she can call upon any other party to observe it." To this the Solicitor General replied: "If I am a law officer at the time I shall most certainly contend that a Power, which it would be easy to show has violated many of its important provisions, cannot be heard in this or any other court to contend that we are bound by the remaining provisions."

The French Conseil des Prises followed essentially the same course in a number of decisions involving the status of enemy merchant ships in French harbors at the outbreak of the war, or which were encountered at sea, having sailed from their last port of departure before the declaration of war and being ignorant of the existence of hostilities. In the case of the German steamer Porto, which had left its last port of departure before the beginning of the war between France and Germany and which was encountered at sea (rencontré en mer) in ignorance of the existence of hostilities, and captured by a French cruiser, the prize court at Bordeaux ⁴⁶ in a decision rendered November 10, 1914, held that in consequence of Germany's reservation of Article 3 and paragraph 4 of the Sixth Hague Convention, the owners of the ship and the cargo ⁴⁷ were

⁴⁶ The French Prize Council was composed of five judges and a government procurator (commissaire du gouvernement).

⁴⁷ "A cargo," said the court, "being transported under an enemy flag is presumed to be an enemy cargo until the contrary is proven." The cargo was claimed by a

not entitled to the benefits of these provisions. The ship and cargo were therefore condemned as good prize and adjudged to the commander, officers, and crew of the capturing vessel. The personal effects of the captain and crew were, however, ordered to be restored to their owners.

In the cases of the Barmbek, captured August 18, 1914, the Frieda Mahn, captured August 8, the Martha Bockhan, captured September 27, the Czar Nicolai II, captured August 4, and the Walkure, captured August 12, all German vessels which had sailed from their last port of departure before the outbreak of war and which were met on the high seas in ignorance of hostilities, the Council of Prizes made decrees of condemnation. In the case of the Barmbek and the Frieda Mahn, the cargoes having been restored to their English owners by direction of the Ministry of Marine, the court was relieved from the necessity of passing on the liability of the cargo to capture. In the case of the Czar Nicolai II, the owners set up the plea that the reservations made by Germany in ratifying the Hague Convention had a limited weight, and applied only to the second part of Article 3, which established an inequality between the Powers which had numerous ports on the seas to which their prizes could be carried and those which, like Germany, had no such ports; that Germany's objection to the convention had reference only to the provisions which forbade destruction and requisition without compensation; that Germany had always maintained that ships encountered at sea' should be allowed to continue their voyages conformably to the principles laid down in the first three articles of the convention; that having few colonial ports she would rarely have occasion to seize, confiscate, or requisition enemy ships encountered at sea, and that in consequence the owners of the Czar Nicolai II and her cargo should be compensated. But the Council ruled that whatever may have been the motives of the German Government in reserving its ratification of certain parts of the convention, the reservation covered the whole of Article 3, the provisions of which were indivisible, and in consequence of the refusal of Germany to promise not to capture French vessels encountered at sea

French company, but no sufficient evidence of French ownership was presented to the Prize Council. It was therefore presumed to be enemy property and was condemned with the ship.

in ignorance of hostilities, German subjects could not claim the benefits of the immunity provided by the convention.⁴⁸

On the whole, the decisions of the British and French prize courts during the present war, in respect to the status of enemy merchant vessels to which special immunities are granted by the Sixth Hague Convention, have been characterized by a liberal and enlightened spirit and an evident desire to give enemy ship owners the fullest benefit of the convention, even though it is not strictly binding upon the British or French Governments or the government of any other belligerent in the present war. This spirit was clearly shown by the court in the case of the Möwe, where Sir Samuel Evans, adverting to the fact that the failure of several states, such as Serbia and Montenegro, to ratify the Hague Conventions and thus render them legally operative, should not be allowed to defeat their purpose, he begged forgiveness for "an humble expression of opinion that it would accord with the traditions of this country if such steps were taken as may be necessary to make operative a series of conventions solemnly agreed upon by the plenipotentaries of forty-five states or Powers after most careful deliberation, with the most beneficent international objects." He suggested that "the counselors who have the responsibility of advising the Crown should be requested to declare by proclamation or otherwise that it would give effect to the conventions whether by the literal terms thereof they were strictly binding or not." 49 As has been said, Sir Samuel announced in his judgment in the case of the Möwe that, whether he was legally bound by the Hague Conventions or not, he would direct that any enemy ship owner who thought he was entitled to a right or immunity under any one of these conventions should be allowed to appear and defend his claim before the court. Both he and the colonial prize judges declared that they would interpret the Hague Conventions in a liberal spirit and that the owners of enemy ships claiming immunity from capture should be given the benefit of every doubt. 50 The following remarks of Sir Samuel

⁴⁸ The texts of the decisions rendered by the *Counseil des prises* in the above mentioned cases may be found in the *Revue générale de Droit International Public*, January–June, 1915, *Jurisprudence*, pp. 1–12; and November–December, 1915, *Jurisprudence*, pp. 53–54.

⁴⁹ Trehern, Pt. I, p. 71.

⁵⁰ Thus it was said in the case of the Barenfels: "It is our duty to give effect to the

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Evans in the case of the *Möwe* ⁵¹ are to be commended and they should serve as a guide for every judge of a prize court who is called on to determine the rights of an enemy suitor:

When a sea of passions rises and rages as a natural result of such a calamitous series of wars as the present, it behooves a court of justice to preserve a calm and equitable attitude to all controversies which come before it for decision, not only where they concern neutrals, but also where they may affect enemy subjects. In times of peace, the admiralty courts of this realm, are appealed to by people of all nationalities who engage in commerce upon the sea, with a confidence that right will be done. So in the unhappy and dire times of war the Court of Prize as a court of justice will, it is hoped, shew that it holds evenly the scales between friend, neutral, and foe.

In several of the cases examined above the decisions of the British prize courts may seem to some to have been unnecessarily harsh and technical, and in that respect may be contrasted with the more liberal interpretation adopted by the Supreme Court of the United States in the case of the *Buena Ventura*; yet in other cases technicalities were disregarded, the plea of equity was admitted, and German ships were ordered to be detained when a strict interpretation of the law and the facts would have justified their condemnation.

The policy of the government, too, has been marked by liberality in dealing with German ships which were in British ports at the outbreak of the war. It could have treated the Sixth Hague Convention as inoperative and condemned the hundreds of enemy ships which were seized under the circumstances set forth in the convention. From many quarters have come urgent appeals for the confiscation of all German vessels in British ports as a necessary and legitimate act of reprisal against Germany for the destruction by submarines of British merchant vessels without warning, in violation of the provisions of the Hague Conventions and contrary to the humane practice of the past. But so far as is intent of the parties (to the Sixth Hague Convention) and the language of its preamble makes it clear that the clauses of the convention are to be construed liberally in favor of any ship which may have had the misfortune of finding itself in any enemy port at the outbreak of the war."

⁵¹ Ibid, Pt. I, p. 72.

⁵² Such an appeal was addressed to the government by the executive committee of the Navy League on July 3, 1915. In its appeal the committee said: "Surely it is the obvious duty of the Government to turn to practical account every vessel in

known such suggestions have not been seriously considered by the government and no reprisals against enemy ships have in fact been resorted to.⁵³

JAMES W. GARNER.

their hands for the benefit of British interests. The destruction of British merchant vessels in violation of the laws of war offers complete vindication for this form of reprisal. Whatever a prize court decision may be as affecting the cargoes of vessels which have been seized, there should be no hesitation on the part of the Government to confiscate enemy ships as an act of reprisal for British merchantmen which have been sunk.

"In the present exigencies of the nation, every enemy merchantman in seaworthy condition should be actively employed as part of the British mercantile marine. The immediate value of the adoption of such a policy would be to convince Germany that she must pay in kind and at once for her lawlessness at sea, and in the second place to assist in considerably modifying the quotations for shipping freights by stimulating a demand for the use of these ships by merchants.

"The Navy League, therefore, strongly urge that his Majesty's Government should at once follow the example of our latest ally, Italy, in confiscating at least an equivalent of enemy ships to those which have been destroyed by German submarines; and further employ all enemy ships for the purpose of British sea commerce upon such terms and under such conditions as may be deemed advisable."

⁵² It appears, however, from a dispatch of Sir Edward Grey to Ambassador Page of February 10, 1915, that the British Government was resorting to its right of requisitioning German ships detained in British ports. This right is expressly recognized by Article 2 of the Sixth Hague Convention, but it is conditioned upon the obligation to make compensation at the close of the war.

THE ORIGIN OF THE HAGUE ARBITRAL COURTS *

II. THE PROPOSED COURT OF ARBITRAL JUSTICE

A few years of experience with the Permanent Court of Arbitration served to make clear the points on which it could be improved. "There was thus created," wrote James Brown Scott as reporter of the project for a Court of Arbitral Justice, "a single institution which might decide purely legal questions on the basis of respect for law, and broader questions of a non-judicial nature, either or both of which were to be decided by judges, that is arbiters, chosen by the parties in controversy. In modern states judicial questions are decided by judges in courts of justice, and the judges are not the direct appointees of the parties. In matters of purely private interest which may be compromised, judges of the parties' choice are as much in place as they would be out of place in a court of justice." ²⁵

This difference, and the failure in the 1899 court to realize it, was, of course, evident to the foreign offices of the world, but Europe was perhaps too concerned about its own affairs to bother much about it and to seek for improvement. The American Department of State was not so ready to stop short of what it considered best. In the very history of the United States it had what is almost the only applicable precedent pointing to the inevitable development of a genuine judicial court from the existing arbitral machinery. In a circular note of October 21, 1904, Secretary Hay made the initial proposal for calling the Second Hague Conference and, therefore, the idea of another council of the nations was well to the fore in the collective mind of the Department of State for some two years and a half before its actual convening.

Improvement of the pacific settlement machinery offered one of the obvious points of departure for the work of the proposed conference and

^{*} The first part of this article appeared in the Journal for October, 1914 (Vol. 8), p. 769.

²⁵ Scott's American Addresses at the Second Hague Conference, 113–114; 1 Deuxième Conference de la Paix, 348.

was, as a matter of fact, carefully studied in the Department. The diplomatic correspondence of 1904, 1905, 1906 and 1907, as published, does not venture a word on the subject, the only program matters discussed at length being those of the limitation of armaments and obligatory arbitration,²⁵ so that it may be concluded that the Department considered its plans as logically constituting a development of the existing court.

In April, 1907, what proved to be the first of a series of national peace congresses was held in New York. Its meetings attracted much attention and in its sessions the first public inkling of the intentions of the American Government was given. President Roosevelt in a letter of April 5 to Andrew Carnegie, which was read on April 15, wrote:

I hope to see adopted a general arbitration treaty among the nations; and I hope to see the Hague Court greatly increased in power and permanency, and the judges in particular made permanent and given adequate salaries, so as to make it increasingly probable that in each case that may come before them, they will decide between the nations, great or small, exactly as a judge within our own limits decides between the individuals, great or small, who come before him. Doubtless many other matters will be taken up at The Hague; but it seems to me that this of a general arbitration treaty is perhaps the most important.²⁷

For the opening address the congress was fortunate enough to have Secretary of State Elihu Root who spoke on April 15, taking for his subject "The American Sentiment of Humanity." In the course of his address he said: 28

It has seemed to me that the great obstacle to the universal adoption of arbitration is not the unwillingness of civilized nations to submit their disputes to the decision of an impartial tribunal; it is rather an apprehension that the tribunal selected will not be impartial. In a dispatch to Sir Julian Pauncefote, dated March 5, 1896, Lord Salisbury stated the difficulty. He said that

"If the matter in controversy is important, so that defeat is a serious blow to the credit or the power of the litigant who is worsted, that interest becomes a more or less keen partisanship. According to their sympathies, men wish for the victory of one side or another. Such con-

^{*}See For. Rel., 1904, 10-14; 1905, 828-830; 1906, 1625-1642; 1907, 1099-1287.

Transfer Proceedings of the National Arbitration and Peace Congress, New York, 1907, 33–34; Scott's American Addresses, etc., 78–79, 2 Deuxième Conférence, 309 and 327.

²⁸ Ibid., 43 ff.; American Addresses, etc., 84-86; 2 Deuxième Conférence, 314-315.

flicting sympathies interfere most formidably with the choice of an impartial arbitrator. * * *

"This is the difficulty which stands in the way of unrestricted arbitration. By whatever plan the tribunal is selected, the end of it must be that issues in which the litigant states are most deeply interested will be decided by the will of one man, and that man a foreigner. He has no jury to find his facts; he has no court of appeal to correct his law; and he is sure to be credited, justly or not, with a leaning to one litigant or the other."

The feeling which Lord Salisbury so well expressed is, I think, the great stumbling-block in the way of arbitration. The essential fact which supports that feeling is that arbitration too often acts diplomatically rather than judicially; they consider themselves as belonging to diplomacy rather than to jurisprudence; they measure their responsibility and their duty by the traditions, the sentiments, and the sense of honorable obligation which has grown up in centuries of diplomatic intercourse, rather than by the traditions, the sentiments, and the sense of honorable obligation which characterize the judicial department of civilized nations. Instead of the sense of responsibility for impartial judgment, which weighs upon the judicial officers of every civilized country, and which is enforced by the honor and self-respect of every upright judge, an international arbitration is often regarded as an occasion for diplomatic adjustment. Granting that the diplomats who are engaged in an arbitration have the purest motives; that they act in accordance with the policy they deem to be best for the nations concerned in the controversy; assuming that they thrust aside entirely in their consideration any interests which their own countries may have in the controversy or in securing the favor or averting the displeasure of the parties before them, nevertheless it remains that in such an arbitration the litigant nations find that questions of policy, and not simple questions of fact and law, are submitted to alien determination, and an appreciable part of that sovereignty which it is the function of every nation to exercise for itself in determining its own policy is transferred to the arbitrators.

What we need for the further development of arbitration is the substitution of judicial action for diplomatic action, the substitution of judicial sense of responsibility for diplomatic sense of responsibility. We need for arbitrators not distinguished public men concerned in all the international questions of the day, but judges who will be interested only in the question appearing upon the record before them. Plainly this end is to be attained by the establishment of a court of permanent judges, who will have no other occupation and no other interest but the exercise of the judicial faculty under the sanction of that high sense of responsibility which has made the courts of justice in the civilized nations of the world the exponents of all that is best and noblest in modern civilization.

In Secretary Root's instructions of May 31, 1907, to the American delegation to the Conference it is written: 29

5. In the general field of arbitration two lines of advance are clearly indicated. The first is to provide for obligatory arbitration as broad in scope as now appears to be practicable, and the second is to increase the effectiveness of the system, so that nations may more readily have recourse to it voluntarily. * * *

The method in which arbitration can be made more effective, so that nations may be ready to have recourse to it voluntarily and to enter into treaties by which they bind themselves to submit to it is indicated by observation of the weakness of the system now apparent. There can be no doubt that the principal objection to arbitration rests not upon the unwillingness of nations to submit their controversies to impartial arbitration, but upon an apprehension that the arbitrations to which they submit may not be impartial. It has been a very general practice for arbitrators to act, not as judges deciding questions of fact and law upon the record before them under a sense of judicial responsibility, but as negotiators effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents. The two methods are radically different, proceed upon different standards of honorable obligation, and frequently lead to widely differing results. It very frequently happens that a nation which would be very willing to submit its differences to an impartial judicial determination is unwilling to subject them to this kind of diplomatic process. If there could be a tribunal which would pass upon questions between nations with the same impartial and impersonal judgment that the Supreme Court of the United States gives to questions arising between citizens of the different States, or between foreign citizens and the citizens of the United States, there can be no doubt that nations would be much more ready to submit their controversies to its decision than they are now to take the chances of arbitration. It should be your effort to bring about in the Second Conference a development of the Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility. These judges should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented. The court should be made of such dignity, consideration and rank that the best and ablest jurist will accept appoint-

²⁹ Sen. Doc. 444, 60th Cong. 1st Sess., 10–11, 12; For. Rel., 1907, 1133, 1135; Instructions to American Delegates to the Hague Conferences, World Peace Foundation Pamphlet Series, 20, 22–23; Scott: The Hague Peace Conferences of 1899 and 1907, II, 189, 191.

ment to it, and that the whole world will have absolute confidence in its judgments.

The Second Hague Conference met on June 13, 1907, and at the second plenary session on June 19 the work to be undertaken was assigned to four commissions. The first of these was made up of Gaētan Mérey de Kapos-Mére of Austria-Hungary, Ruy Barbosa of Brazil, and Sir Edward Fry of Great Britain, honorary presidents; Léon Bourgeois of France, president; Herr Kriege of Germany, Cléon Rizo Rangabé of Greece, Guido Pompilj of Italy, and Gonzalo A. Esteva of the United Mexican States, vice presidents. To this commission was referred the questions relative to maritime prize, which came up later in connection with the International Prize Court, and the first article of the Conference program of April 3, 1906, which read: "Improvements to be made in the provisions of the convention relative to the peaceful settlement of international disputes as regards the Court of Arbitration and the international commissions of inquiry." ³⁰

The First Commission met on June 22, M. Bourgeois opening with one of his felicitous addresses in which he reviewed the status of the questions to be examined. "As a natural result of the organization of recourse to arbitration and the institution of the Permanent Court, the idea of international justice has entered the domain of practical reality," he commented. "The mind of the peoples is keenly engrossed with it, impatient of enjoying without delay its full realization, so great are the needs for equity, to which the progress of civilization naturally conduces. The legitimate prudence of governments is accustomed to it." ³¹ But the talented Frenchman left the thought there, to continue with the results already credited to The Hague machinery for pacific settlement. As he said a moment later, "it does not befit your president to determine the field of your debates or to forecast the problems which may later be submitted to you."

Baron Marschall von Bieberstein of Germany, as the applause accorded to M. Bourgeois died away, rose to present his project for prize jurisdiction, followed a moment later by Sir Edward Fry of Great Britain with a plan for the same purpose. The German offered an

³⁰ See For. Rel., 1906, 1626 and 1630, and 1 Deuxième Conférence, etc., XVII. ³¹ 2 Deuxième Conférence, etc., 5.

amendment to the Pacific Settlement Convention, Mexico presented an obligatory arbitration treaty, France two projects on the commission of inquiry and summary arbitration titles, and General Porter his proposal on the recovery of contract debts. M. de Martens asked that the right to deposit amendments or projects in the course of the debates be freely reserved to each delegation, and the president ruled that "each may offer propositions whenever it shall seem opportune."

He continued to the effect that the commission had before it proposals of two orders,—pacific settlement and maritime prize. Accordingly, he suggested a division into two subcommissions, the first to study improvements in the Pacific Settlement Convention, and the second to study the matters eventually brought into the International Prize Court Convention. Two lists were opened, and commission members were free to join the subcommissions according to their predilections. A total of 101 members joined the First Subcommission.

The First Subcommission met on June 25, M. Bourgeois as president indicating again that "it is needless to say that there can be no closure against any future proposition and that complete freedom of initiative and of discussion is assured to each during the course of the debates." ³² The actual work of the First Subcommission was assigned as the revision of the text of the 1899 Convention for the Pacific Settlement of International Disputes in connection with the propositions already made and to be made. ³³

At the beginning of this session, "M. de Martens, in the name of the Russian delegation, deposited three propositions * * * the second on the improvement of the Permanent Court of Arbitration (in two folios)." The first and third of these three propositions by definition and

¹¹ 2 Deuxième Conférence, etc., 209.

³² This work began at the second session on June 27 and continued through ten sessions until August 13, when the subcommission's work was done on this subject. Comité d'Examen A, established by the fourth session of the subcommission on July 9, held but six sessions for its task of putting the revision in shape for submission, its first four on July 13, 16, 20 and 23, a fifth on August 13, and a sixth on October 1. Subcommissions of the Conference and their subordinate comités d'examen met at the convenience of their members, some of whom were frequently liable to have conflicting engagements. Commissions met in the morning and afternoon, Tuesday morning and Thursday afternoon being set for the first, which is the one in which we are here interested.

specific reference in the minutes are Annexes 2 and 11, printed as such in 2 Deuxième Conférence Internationale de la Paix, 862 and 875, and relating respectively to commissions of inquiry and arbitral procedure. The second, "in two folios," is identified as Annex 10, and there need be no doubt that its second folio was the one printed as Annex 75, which was later referred to by M. de Martens himself as having been deposited "nearly six weeks" before August 1. And this is proved by the list made out for Committee of Examination A.³⁴ Again Russia was in the lead as to the deposit of projects, and the second folio of the second project deposited on June 25, later called Annex 75, reads as follows:

TITLE IV

INTERNATIONAL ARBITRATION

Chapter II. The Permanent Court of Arbitration

Art. 24. The members of the Permanent Court of Arbitration shall meet once each year at The Hague in plenary session.

These meetings are competent for:

1. Electing by secret ballot three members from the list of arbiters who, during the following year, must always be ready to constitute immediately the Permanent Tribunal of Arbitration;

2. Taking cognizance of the annual report (compte rendu ³⁵) of the Administrative Council, as well as of the International Bureau;

- 3. Expressing the opinion of the Permanent Court of Arbitration on questions arising during the course of the procedure of an arbitration tribunal, as well as on the actions (agissements) of the Administrative Council and the International Bureau:
- 4. Exchanging their ideas on the progress of international arbitration in general.

The same members of the Permanent Tribunal of Arbitration may be re-elected by the above-mentioned meeting of the members of the Permanent Court of Arbitration for a new year of functioning.

Art. 25. In case of the consent of the Powers in dispute to leave their difference to arbitration, they address themselves to the International Bureau requiring it immediately to convoke members of the Permanent Tribunal of Arbitration.

The two parties are free each to add one member specially designated to the body of the Permanent Tribunal of Arbitration.

Art. 26. In default of the convocation of the Permanent Tribunal of

⁸⁴ Thid 375

³⁵ The term used as the title for the document annually issued is rapport.

Arbitration, the parties in dispute may proceed in the following manner for the constitution of a special Tribunal of Arbitration:

Each party appoints two arbiters and they together choose an umpire. In case of a division of votes, the choice of the umpire is intrusted to a third Power, designated in common accord by the parties.

If accord is not established on this subject, each party designates a different Power, and the choice of the umpire is made in concert by the

Powers so designated.

The Tribunal being thus composed, the parties notify the International Bureau of their decision to constitute a special Tribunal of Arbitration, and the names of the arbiters.

Art. 27. The Permanent Tribunal of Arbitration meets on the date

fixed by the parties.

The members of the Permanent Court of Arbitration, in the exercise of their functions and outside of their countries, enjoy diplomatic privileges and immunities.

Here follow Articles 25 ff., of the Convention of 1899.

By repute it was known that the delegation of the United States intended to make some suggestion for improving the existing court. Formal deposit of projects was not demanded owing to the freedom permitted in introducing them; but, though the time of deposit of the American proposition is not given in the published records of the Conference, it can be approximated. Article 9 of the reglement of the Conference provided that "every proposed resolution or desire to be discussed by the Conference must, as a general rule, be delivered in writing to the president, and be printed and distributed before being taken up for discussion." 86 Observance of this rule gives the only clue to the time of deposit of the American proposal, and it is interesting to note that the evidence points to a much earlier date of deposit than has been usually assigned to the project. When Committee of Examination A met for its first session on July 13, M. Bourgeois as president summarized the propositions "communicated to the committee in due form-each document bearing its serial number," that is, its number in the order of its deposit. The list shows the Russian proposition as No. 6 and the American one as No. 19. By tracing the date of deposit of all the projects possible, I conclude that the American proposition was handed in between July 2 and July 9 or on one of those dates. This approximate date is circumstantially indicated by the fact that as early as July 16,

^{26 1} Deuxième Conférence, 62; Scott's Hague Peace Conferences, I, 774.

M. Asser of the Netherlands showed a familiarity with it, which was not recently acquired, and said that its existence, "at the beginning of the Conference," had prevented his depositing a project. At any rate, shortly after Russia's project was in, the United States deposited this epoch-marking document:

Conformably to the instructions of its government, the delegation of the United States of America has the honor of submitting the following proposition, with the purpose of facilitating recourse to a judicial determination of international differences which it has not been possible to settle by diplomatic means, for the organization of a permanent court of arbitration, accessible at all times, and functioning, except by contrary stipulation of the parties, conformably to the rules of procedure inserted in the Convention of 1899, or which may be adopted by this Conference.

Although our delegation does not consider it expedient to formulate in detail the organization, jurisdiction, or procedure of this tribunal, the delegation is ready to submit at the opportune moment suggestions concerning the details of this proposition of a nature to aid the special committee in taking up the consideration of the question. However, in view of the importance and purpose of the question, the delegation of the United States of America respectfully suggests that it would be in point that the president of the First Commission appoint a special committee composed of nine members at most, to which shall be submitted the present proposition, others of the same character and those including the various details of the proposition; the special committee, after due deliberation, to make a report of its views and recommendations to the First Subcommission of the First Commission.

I. A Permanent Court of Arbitration shall be organized, to consist of fifteen judges of the highest moral standing and of recognized competency in questions of international law. They and their successors shall be appointed in the manner to be determined by this Conference, but they shall be so chosen from the different countries that the various systems of law and procedure and the principal languages shall be suitably represented in the personnel of the court. They shall be appointed for —— years, or until their successors have been appointed and have accepted.

II. The Permanent Court shall convene annually at The Hague on a specified date and shall remain in session as long as necessary. It shall elect its own officers and, saving the stipulations of the convention, it shall draw up its own regulations. Every decision shall be reached by a majority, and nine members shall constitute a quorum. The judges shall be equal in rank, shall enjoy diplomatic immunity, and shall receive a salary sufficient to enable them to devote their time to the consideration of the matters brought before them.

III. In no case (unless the parties expressly consent thereto) shall a

judge take part in the consideration or decision of any case before the

court when his nation is a party therein.

IV. The Permanent Court shall be competent to take cognizance of and determine all cases involving differences of an international character between sovereign nations, which it has been impossible to settle through diplomatic channels and which have been submitted to it by agreement between the parties, either originally or for review or revision, or in order to determine the relative rights, duties or obligations in accordance with the finding, decisions, or awards of commissions of inquiry and specially constituted tribunals of arbitration.

V. The judges of the Permanent Court shall be competent to act as judges in any commission of inquiry or special tribunal of arbitration which may be constituted by any Power for the consideration of any matter which may be specially referred to it and which must be deter-

mined by it.

VI. The present Permanent Court of Arbitration might, as far as possible, constitute the basis of the court, care being taken that the Powers which recently signed the Convention of 1899 are represented in it. 37

The First Subcommission at its second, third and fourth sessions on June 27, July 2, and July 9 was engaged in passing the 1899 Convention for the Pacific Settlement of International Disputes through a reading preliminary to revision. On the 16th the subcommission had reached Title IV, relating to arbitration and the Permanent Court, in this preliminary reading. Then began an avalanche of projects dealing mostly with the recovery of contract debts. This was explained by the facts that the American proposal on the subject had been called forward by General Porter's speech on July 16 and that opinion leaned strongly to realizing the idea by an amendment in Title IV, Chapter III, relative to arbitration in general. In addition, obligatory character and the status of the Permanent Court were naturally suggestive subjects. Under these conditions, M. Asser of the Netherlands said:

Before the meeting of this Conference, the delegation of the Netherlands proposed the question of what improvements might be introduced into the Convention for the Pacific Settlement of International Disputes, especially as concerns international arbitration.

It has understood that in two respects the Conference would seek to strengthen this institution, first, by working to extend obligatory ar-

³⁷ American Addresses, etc., 205; Scott's Hague Peace Conferences, I, 821–822; 2 Deuxième Conférence, etc., 1031–1032, from which the preamble is translated.

bitration, and next by facilitating procedure or causing the formation of a truly permanent tribunal in the body of the Court of Arbitration. In fact, numerous proposals in one or the other sense have been deposited. They all testify to the desires of their authors to advance the work undertaken in 1899. What the First Conference, under the very able direction of the illustrious president of this commission, did in the interest of international arbitration constitutes a considerable progress. It is the first stage in the direction of the pacific solution of conflicts. But our Conference would give cause everywhere in the world for a very great deception if we should not profit by the singular occasion presented to us in the parliament where all civilized nations are represented to advance the cause which is dear to us. From this point of view we ask ourselves what we have a right to expect from this Conference in respect to the matter which concerns us. * *

We believe that the cause of arbitration will be served in a manner much more efficacious (than by obligatory arbitration) by the efforts tending to realize in whole or in part the permanence of the Court of Arbitration. I shall never forget the great impression produced in 1899 by the discourse of Sir Julian Pauncefote, the honorable British delegate, who, for the first time from the mouth of a statesman of this great empire,—which no one can reproach with too lightly sacrificing to the illusions of the moment,—gave us to understand that this eminent diplomat proposed the establishment of a permanent court with the judgment of differences between states as its mandate. Russia, faithful to the spirit which had inspired her august Emperor, came not only to support the proposition, but on her part presented a detailed project concerning the organization and functioning of the court. The Committee of Examination, full of enthusiasm, worked to construct the edifice of this world tribunal. Good will was not lacking, but circumstances did not then permit realization of the idea.

Instead of a permanent court, the convention of 1899 gave only the phantom of a court, an impalpable specter or, to speak more precisely, it gave a secretariat and a list. And when two Powers, having a difference to settle, * * * demand that the door giving access to the hearing room where this court sits be opened to them, the secretary general thanks to the munificence of Mr. Carnegie, can show them a magnificent hall, but, instead of a court, he will present to them a list on which they will find the names of a large number of persons "of a recognized competence in questions of international law, enjoying the highest moral consideration, etc., etc." Gentlemen, I take the liberty of observing that even before the creation of the court, the parties were quite as well able to choose arbiters from the persons mentioned on this list. What, then, has resulted in practice from this fine creation of 1899?

Many powers—we are happy to remark after reading the propositions which have been made to us—seem fully convinced that the Conference of 1907 must not be dissolved without being able to say,—applying to

our work a well known historic phrase,—that the Permanent Court, in

whole or in part, shall henceforth be a verity.

The delegation of the Netherlands, convinced of the utility of such a transformation, but not daring to predict its realization in a complete manner in this Second Conference, had prepared a proposition looking to installing, alongside the secretariat, a permanent committee of procedure whose members, if the parties desired, might also be called upon to adjudge the difference itself. This proposition has not been deposited because from the beginning of the Conference it has been in possession of the more radical propositions of two great Powers looking to the establishment of a permanent tribunal for the decision of the disputes themselves. The initiative taken by the great Republic of North America and by Russia is most remarkable. We express the wish that, except for any modification of details which may seem useful, it may attain the desired purpose. It can be asserted that the idea of a permanent international tribunal gains ground.

England proposes an institution for special prize jurisdiction. Germany in its project on the same subject has also adopted this system, but only for the duration of a war, which changes nothing in the principle of creating a tribunal charged with judging future conflicts. * * * The Conference, one may now foresee, will succeed in introducing this international jurisdiction of prize, as well as many other important improvements in the field of the law of war, and we can felicitate it

thereon.

Just because we are a peace conference, I hope that we will not separate without having rendered recourse to arbitration easier both by the revision of rules of procedure and by establishing in the body of the court of arbitration a permanent tribunal with a competence more or less extensive. The mere existence of such a tribunal, even without the juridic obligation of invoking its decision, will have an immense moral effect in the interest of justice and peace.

You recall, gentlemen, how a great monarch—who was not only a famous general but at the same time a philosopher trained in the French school of the 18th century,—on the point of committing an injustice, was impressed by the exclamation of a simple miller who recalled to him that "there were judges at Berlin." "Pleased that under his rule people believed in justice," he yielded himself to the court

believed in justice," he yielded himself to the court.

Well gentlemen when some day a really perma

Well, gentlemen, when some day a really permanent tribunal shall sit here, I believe I can say—and you know I am not a Utopian—that even without the signing of conventions of arbitration, whose utility I am far from denying, it will not be without practical result that the famous article inspired by France—the "duty" article (27)—is invoked to recall to the state wishing to commit an injustice that "there are judges at The Hague." ³⁸

³⁸ 2 Deuxième Conférence, 233-234, 235-236.

Speaking of obligatory arbitration in the seventh session of the subcommission on July 23, Baron Marschall von Bieberstein of Germany said:

I see still another way open toward the end which is common to us. The idea of arbitration between nations will unquestionably gain if we succeed in improving and simplifying the procedure established by the Convention of 1899 for recourse to the Hague tribunal. But the most important reform would be that which the proposals of the United States of America and of Russia indicate to us and which would consist in giving to the Hague tribunal the character of a really permanent tribunal. We subscribe fully to the homage which has been rendered to the activity of the Hague Court. But we must not close our eyes to its imperfections. It is not criticism I desire to make. Quite the contrary. It is the great merit of the First Conference to have indicated to us the road we must follow. A real, permanent court, composed of judges who by their character and ability shall enjoy universal confidence, will exercise an attraction, automatic as it were, for juridic differences of every sort. And such an institution will assure to arbitration an employment more frequent and extensive than a general compromisory clause which would have to be surrounded with evasions, reserves and restrictions. We are ready to employ all our forces to collaborate in the accomplishment of this task. In thus continuing the work of 1899, the Second Peace Conference would not be inferior to the First and would justify the hope that its labors shall contribute to the maintenance of peace by extending the empire of law and fortifying the sentiment of international justice.39

Chapter I of Title IV occupied the sessions of July 16, 23 and 27, when, after a flood of projects, the subcommission was ready to consider the next chapter, on the Permanent Court, together with proposals for changing it. Because the cornerstone of the Hague Palace of Peace was to be laid on Tuesday, July 30, the regular meeting day, the session was postponed until Thursday, August 1, when the ninth session of the First Subcommission convened at 10:45 a. m. M. Bourgeois said that the order of the day called for continuing the reading of the Convention of 1899, beginning with Article 20, on the Permanent Court. He called attention to the synoptic table which had been prepared by the secretariat summarizing the proposals. As the applause appreciating this very excellent piece of work ceased, Joseph H. Choate, already one of the great figures of the Conference, arose. A new idea was to be championed in the Conference.

²⁹ 2 Deuxième Conférence, 289.

Mr. Choate's speech calling attention to the American project being in English, was not fully understood by many of the delegates, but it was immediately read in French translation by Baron d'Estournelles de Constant, eliciting cordial applause in both versions. The technical American delegate, James Brown Scott, followed his chief, speaking in French and explaining in its practical features the aim and merits of the plan. It is impracticable to insert both speeches here on account of length, and they are readily available in English; but it is necessary to summarize, and this may be done in the words of the orators. Said Mr. Choate in part:

We do not err, Mr. President, in saying that the work of the First Conference in this regard, noble and far-reaching as it was, has not proved entirely complete and adequate to meet the progressive demands of the nations, and to draw to the Hague tribunal for decision any great part of the arbitrations that have been agreed upon; and that in the eight years of its existence only four cases have been submitted to it, and of the sixty judges, more or less, who were named as members of the court at least two thirds have not, as yet, been called upon for any service. It is not easy, or perhaps desirable, at this stage of the discussion to analyze all the causes of the failure of a general or frequent resort of the nations to the Hague tribunal, but a few of them are so obvious that they may be properly suggested. Certainly it was for no lack of adequate and competent and distinguished judges, for the services they have performed in the four cases which they have considered have been of the highest character, and it is out of those very judges that we propose to constitute our new proposed court.

I am inclined to think that one of the causes which has prevented a more frequent resort of nations to the Hague tribunal, especially in cases of ordinary or minor importance, has been the expensiveness of a case brought there; and it should be one element of reform that the expense of the court itself, including the salaries of the judges, shall be borne at the common expense of all the signatory Powers, so as to furnish to the suitors a court at least free of expense to them, as is the case with suitors of all nations in their national courts.

The fact that there was nothing permanent or continuous or connected in the sessions of the court, or in the adjudication of the cases submitted to it, has been an obvious source of weakness and want of prestige in the tribunal. Each trial it had before it has been wholly independent of every other, and its occasional utterances, widely distant in point of time and disconnected in subject-matter, have not gone far toward constituting a consistent body of international law or of valuable contributions to international law, which ought to emanate from an international tribunal representing the power and might of all the nations. In fact it

has thus far been a court only in name,—a framework for the selection of referees for each particular case, never consisting of the same judges. It has done great good as far as it has been permitted to work at all, but our effort should be to try and make a tribunal which shall be the medium of vastly greater and constantly increasing benefit to the nations

and to mankind at large.

Let us then seek to develop out of it a permanent court, which shall hold regular and continuous sessions, which shall consist of the same judges, which shall pay due heed to its own decisions, which shall speak with the authority of the united voice of the nations, and gradually build up a system of international law, definite and precise, which shall command the approval and regulate the conduct of the nations. By such a step in advance we shall justify the confidence which has been placed in us and shall make the work of this Second Conference worthy of comparison with that of the Conference of 1899.

We have not, Mr. President, in the proposition which we have offered, attempted even to sketch the details of the constitution and powers and character of our proposed court. We have not thought it possible that one nation could of itself prescribe or even suggest such details, but that they should be the result of consultation and conference among all the nations represented in a suitable committee to be appointed by the

president to consider them. 40 *

Said Mr. Scott in his longer and more detailed speech:

The strength of the work of 1899 lies in the idea of a court for the settlement of international differences; its weakness consists in the fact that the machinery provided is inadequate for its realization.

* It is common knowledge that no permanent court exists because no permanent court ever was established under the convention, and it necessarily follows that if a permanent court does not exist, it is not accessible at all times, or indeed at any time. The most that can be said is that the signatory Powers furnished a list of judges from which, as occasion required, a temporary tribunal of arbitration might be composed.

It would further appear that the judges so appointed by the signatory Powers were not necessarily judges in the legal sense of the word, but might be jurists, negotiators, diplomatists, or politicians specially detailed. In a word, the Permanent Court is not permanent because it is not composed of permanent judges; it is not accessible because it has to be constituted for each case; it is not a court because it is not composed of judges.

A careful examination of the sections previously quoted shows beyond peradventure that the framers contemplated the establishment of a

⁴⁰ American Addresses, etc., 80-81; 2 Douxième Conférence, 310-311 and 328-329.

court of justice to which differences of an international nature might be submitted for judicial consideration and decision. * * *

To decide as a judge, and according to law, it is evident that a court should be constituted, and it is also evident that the court should sit as a judicial, not as a diplomatic or political, tribunal. Questions of special national interest should be excluded because the intent clearly is to decide a controversy not by national law but by international law. A court is not a branch of the foreign office, nor is it a chancellery. Questions of a political nature should likewise be excluded, for a court is neither a deliberative nor a legislative assembly. It neither makes laws nor determines a policy. Its supreme function is to interpret and to

apply the law to a concrete case.

The court, therefore, is a judicial body composed of judges whose duty it is to examine the case presented, to weigh evidence, and thus establish the facts involved, and to the facts thus found to apply a principle of law, thus forming the judgment. It follows, then, that only questions capable of judicial treatment should be submitted, and that the duty of the judge should be limited to the formation of judgments. The desideratum is that a law and its interpretation should be certain, and certainty of judgment is possible only when strictly judicial questions are presented to the court. Upon a given state of facts you may predicate a judgment. If special interests be introduced, if political questions be involved, the judgment of a court must be as involved and confused as the special interests and political questions. * *

It is difficult to conceive of a court of justice without judges trained in the administration of justice. It is as difficult,—indeed it is well-nigh impossible,—to think of a court without at one and the same time having in mind the jurisdiction of the court. An international court does not compete with a national court. The questions submitted to it are not of a national or municipal character. They are of an international character, to be determined according to international equity and interna-* * Clearly it can have no original jurisdiction. Its tional law. jurisdiction must be conferred upon it specifically, for when created it is as powerless and helpless as the newborn babe. The jurisdiction must be conferred upon it expressly, and it would seem that this may happen in several ways. First, the signatory Powers may conclude a general treaty of arbitration and may agree that all differences of an international nature shall be considered. Or, second, if the signatory Powers do not conclude a general agreement, the positive jurisdiction of the court may be based upon the separate treaties of arbitration already concluded between the nations.

But it may well happen that nations may, in the absence of a treaty of arbitration, be willing to submit special differences arising between them to the judgment and determination of the court. As the jurisdiction in such cases would be occasional, and as it would depend wholly upon the volition of the parties in controversy, it may be called voluntary or

facultative jurisdiction. It is a matter of no great importance whether the jurisdiction is obligatory or whether it is facultative, provided only that questions be submitted to the court for their determination. * *

It is probable that the views already presented may meet with general acceptance, but the important question still remains, How is this permanent court, composed of judges, to be constituted? No attempt is made to disguise the difficulty and importance of this question; for if it were an easy task, we would not be engaged in discussing it in this year of grace 1907.

It is obvious at the outstart that a court, to be truly international, should represent not only one or many but all nations. It is equally obvious that a court composed of a single representative from each independent and sovereign nation would be unwieldy. Forty-five judges, sitting together, might compose a judicial assembly; they would not constitute a court. And our purpose is to establish a court, not to call into existence a judicial assembly.

* * * However desirable a permanent court may be, it cannot be imposed upon any nation. The court can only exist for this nation by reason of its express consent. If it be said that all states are equal, it necessarily follows that the conception of great and small Powers finds no place in a correct system of international law. It is only when we leave the realm of law and face brute force that inequality appears. It is only when the sword is thrown upon the scales of justice that the balance tips. * *

* * Recognizing the equality of right and the equality of interest in law, and giving full effect to this equality in the constitution of a permanent court, we must yet find some other principle upon which to base it if we wish to erect a small court of a permanent nature.

Fortunately another principle exists. While all states are equal in international law, and while their interest in justice is the same, or should be the same, there is a great difference between nations considered from the standpoint of material interests. * * * The interests of a large and populous state are widespread, indeed universal, and complications and differences are most likely to arise where these interests come into conflict. It cannot be said that lawsuits bear a mathematical and constant relation to population. A state of thirty millions may not have six times as many lawsuits as a state of five millions, and it is to be hoped that this is not so. But there is a sensible relation between population, wealth, and industry on the one hand and lawsuits on the other. * * *

* * We must determine the law to be enforced. The problem here is complicated by the fact that many systems of law exist and that these various systems must find adequate representation. As a rule, a single system of law obtains in a municipal court; another system obtains in another court. These two systems, administered in one and the same

court, would not make the tribunal a court of international law; for, to be truly international, it must embrace the various systems of the world. When this is done it becomes a world court. If the Permanent Court of Arbitration is to judge according to equity and international law, it must not be the equity of any one system, but the equity which is the resultant of the various systems of law. * * * For the purposes of the Permanent Court of Arbitration municipal law must be internationalized. In this case, and in this case only, can the judgment be equitable in any international sense, and the judgment so formed will be based upon international equity as well as international law. * *

The question of language is one of great difficulty, and languages as such should be represented in the court. To one sitting in the Conference day by day and observing the difficulty with which the idea clothes itself in French form, it must be a matter of great importance that the languages should find representation in the court, so that the judge and

client may be upon speaking terms.

* * * Should parties to a controversy desire a summary proceeding, they might request a special detail of three or five judges from the Permanent Court of Arbitration by striking alternately from the list an equal number until the desired number remained. Powers desiring to form a commission of inquiry for a particular purpose could resort to the Permanent Court of Arbitration and constitute a commission in the above-described manner, and add thereto an equal number of nationals from each of the parties. * * *

Without considering further details, * * * I beg to express the conviction that the mere existence of a permanent court of arbitration, composed of a limited number of judges trained in municipal law and experienced in the law of nations, would be a guaranty of peace. As long as men are what they are, and nations are formed of ordinary men, we shall be exposed to war and rumors of war. The generous and highminded may seek to ameliorate the evils and misfortunes of armed conflict, but it is certainly a nobler task, and a more beneficent one, to remove the causes which, if unremoved, might lead to a resort to arms. The safest and surest means to prevent war is to minimize the causes of war and to remove, as far as possible, its pretexts. Justice, as administered in municipal courts, has done away with the principle of self-help and the use of force as a means of redress. An international court where justice is administered equally and impartially to the small as well as to the great will go far to substitute the rule of law for the rule of man, order for disorder, equilibrium for instability, peace and content for disorder and apprehension of the future. To employ the language of a distinguished colleague, M. de Martens, the line of progress is par la justice vers la paix.41

⁴¹ American Addresses, etc., 86 ff. passim; 2 Deuxième Conférence, 315-321 passim. The translation, by Dr. Scott himself, is frequently somewhat free.

M. de Martens of Russia followed the American's eloquent period, and is quoted at length because of the soundness of his judgment, his division of honors for the credit of proposing a change in the existing court, and the relative lack of appreciation of his speech among English-speaking people. In essentials he said:

I consider it necessary to-day to explain the reasons which led our delegation to prepare (its) project. My task is, however, made easy by the fine discourse which we have just heard from the first delegate of the United States of America. We agree with him on an essential and indisputable fact, that the present Permanent Court of Arbitration is not organized as it ought to be. An improvement is called for and it is our task to accomplish it, an important task, in my opinion, more important than any which falls to us.

I have under my eyes the Russian circular of April 3, 1906, in which is the program adopted by all the Powers. It speaks in the first place of the necessity of perfecting the principal creation of the 1899 Conference, that is, the Permanent Court: "The First Conference separated in the firm belief that its labors would subsequently be perfected from the effect of the regular progress of enlightenment among the nations and abreast of the results acquired from experience. Its most important creation, the International Court of Arbitration, is an institution that has already proved its worth and brought together, for the good of all, an areopagus of jurists who command the respect of the world." * * * [Cf. For. Rel., 1906, 1629.]

* * If we examine closely the road traveled, we shall discover that in reality the ideal end we seek to attain is still far off. Four arbitrations have been submitted to the Hague Court in eight years; 33 conventions have been signed. They are respectable figures, but insufficient if we are not to play with words. Have the Powers which have concluded these arbitration conventions sought to fortify the Hague Court? Not always. They have provided arbitration, but they have sometimes forgotten the Hague Court. In a way these conventions testify rather to the forgetting than the existence of the court. It is therefore true that improvements are urgent; it is so true that the Argentine delegation has expressed the opinion that heads of states should refuse to accept the functions of arbiter before appeal is made to the Hague Court. I do not think it is necessary to limit the freedom of states in this matter. * * *

Our Court of Arbitration exists. Day before yesterday we laid the first stone of its building. Our soul was put into this stone, and our attachment to the progress of the institution is unanimous. It is none the less true that those who have given strongest proofs of this attachment recognize that the court is in reality only a list. * *

What, therefore, is this court whose members are not even known?

The court of 1899 is only an idea which sometimes takes body and soul and then disappears again. This is why the delegation of Russia has presented its project, calling the attention of the Conference and provoking an exchange of views on the question of the Permanent Court; it does not pretend to make this project the sole basis of deliberations. Permit me to recall on this occasion that in 1899 we had presented a project of a permanent court; we retired it to take as a basis of discussion that of Lord Pauncefote, in the spirit of conciliation and impersonal devotion which must animate us all. When one works for the triumph of justice and the well-being of humanity all considerations of national or personal self-esteem and ambition must disappear. We are entirely ready once more to efface ourselves to aid a solution in harmony with the general spirit of our proposition, to make a further step in the road opened in 1899.

I pass now, gentlemen, to the text of my proposition without, however, entering into premature explanations. First, it is the principle of the absolute freedom of the Powers in the choice of arbiters which remains intact. We have maintained the idea of the list of arbiters, but we consider that these arbiters must be known and at least in part be at the disposal of the states. This is why we have introduced the idea of periodic meetings, during which the members elect the Permanent Tribunal of Arbitration. This tribunal would thus be living, always ready, and at any instant at the disposal of the Powers wishing to have recourse to it. * * * The advantage of the Russian project consists in the preservation of existing bases, on which I propose to you to construct another edifice better adapted to the just demands of international life.

Permit me a few words more, from the bottom of my heart. In history there have always been epochs when great ideas dominated and inspirited the soul; sometimes it was religion,—sometimes a philosophic current, sometimes a political conception. The fact of this kind most striking is that of the crusades. From all countries went forth the cry, "To Jerusalem! God wills it!" To-day the great idea which dominates our time is that of arbitration. As soon as a conflict arises between nations, even if it is not amenable to arbitration, ever since 1899 we have heard the unanimous cry, "To The Hague!" If we all join together that this idea shall take body and soul, we shall leave The Hague with head erect and with conscience tranquil. And then history will inscribe in its annals: "The Second Peace Conference has deserved well of humanity." ⁴²

Applause woke the echoes, and as the hall became quiet Baron Marschall von Bieberstein, another of the great figures of the Conference, arose. "At the moment this discussion begins," he said, "I take the

¹² 2 Deuxième Conférence, 321-323.

occasion to repeat formally my declarations in the name of the German delegation. It is with true satisfaction that I accept the general principles so eloquently defended by the delegates of the United States of America. We are ready to employ all our forces in collaborating for the accomplishment of this task which M. de Martens has very justly defined as one of the most important of the Second Peace Conference." The merited applause doubtless expressed a certain gratitude at the attitude of Germany, which memory could only contrast sharply with her halting posture eight years before.

Sir Edward Fry, successor in dignity and place to Sir Julian Pauncefote, spoke next to the proposition. "Having heard the very important
discourses of Mr. Choate and Mr. Scott, I do not hesitate," he asserted,
"in the name of the delegation of Great Britain to give to the principle
of the proposition of the United States of America our cordial support.
I hope," he continued in a practical manner, "that after a discussion as
brief as possible the project will be sent to a committee of examination
and that it will adopt some of the ideas of M. de Martens, particularly
the idea that the court should always be open."

Argentina followed, ⁴³ a newcomer in the Conference, a great representative of a growing continent. She raised the crucial question. Luis M. Drago in her behalf read this declaration:

The delegation of the Argentine Republic is in principle in accord with the project presented by the delegation of the United States of America, * * * always supposing that, by its constitution and organization, this permanent court shall offer sufficient guaranties to all states or groups of states.

We consider, in fact, that, even though its jurisdiction should be voluntary, the creation of a permanent court constitutes a step toward peace

On the side of obligatory arbitration, to which the Argentine Republic would desire to subscribe with the rest of the nations here represented, it seems evident to us that in giving vitality to an international jurisdiction we might be able to present to all states in conflict a permanent tribunal, composed of magistrates of incontestable competence in questions of international law, and enjoying the highest reputation from the moral standpoint. In doing this, the Conference would obtain a positive

⁴² Francisco L. de la Barra had preceded the British delegate in a statement for Mexico, and Carlos Rodriguez Larreta of Argentina preceded M. Drago, but their speeches did not strictly relate to the court.

result, something tangible, which would be the guaranty of law and which would undoubtedly form a body of jurisprudence capable of handling the interpretation of treaties with all the prestige of the highest justice.

The proposition before us gives voice to a thought which must merit our entire approval. But the basis of representation in the permanent court will provoke fertile discussions permitting discovery of the best

and most efficacious means of constituting it.

In the opinion of the Argentine delegation, representation must be granted according to the importance of the foreign commerce of each state, because commerce and production are surely the best indicators of the vitality, intelligence, work and progress of nations. Such was the basis chosen by William Penn in the seventeenth century when he even then dreamed of the creation of a universal jurisdiction exercised by a permanent high court to settle international disputes. We believe it is needless to add that we accept this jurisdiction, which in all cases would be purely voluntary.

Saturday, August 3, the tenth session of the subcommission opened with routine deposits, and Mr. Choate then reverted to the project of a court by expressing the American desire that its own and the Russian project be made the subject of a common discussion. It was an interesting and important move, wholly aside from its courtesy. For the suggestion meant nothing less than that the Conference was to be entirely free to choose between the partial and the thoroughgoing proposition. It gave free opportunity to register the status of responsible state opinion regarding the organism, and the resultant choice of the thoroughgoing proposition is on that account the more enlightening. Auguste Beernaert of Belgium, perhaps the internationalist at the Conference most experienced in point of dealing with all phases of cosmopolitanism, opened the discussion with some considerations regarding the difficulty of the problem. In substance he said:

* * Here arises anew before us the question lengthily debated in 1899: Is it advantageous to establish an international tribunal, really permanent, in which judges, comparatively few, irremovable or almost so, should judge the disputes of the various states of the civilized world? Here, gentlemen, certainly is one of the gravest and most difficult of problems. * *

We ask now [having reviewed the excellences of the 1899 Court] if adoption of the propositions of the American delegation would constitute progress. First comes a question of principle on which I think we must all be in accord. It is that, if any permanent tribunal is con-

stituted, it would be an arbitral jurisdiction essentially facultative and that it would be necessary to determine the wish of the nations in dispute for each case. * * *

The Interparliamentary Union in which M. Beernaert was a leader has been seized of vast projects by which the reorganized world would henceforth be formed of a single state or at least of a federation of states having a single parliament, a single executive power, a single superior * * * This is in my opinion the lamentable exaggeracourt of justice. tion of a movement of ideas, true in itself, which does honor to our century. Especially at this time it runs through the world as great, vague strivings for fraternity and solidarity. Men of different races know each other, no longer feel themselves hostile. An assembly like this, of which our fathers had not even dared to dream, astonishes no one. It is the result of this enormous progress of all the sciences which has suppressed distances, unified interests, merged races. But, on the other hand, never has national sentiment been more lively, and we see old nations and old languages, which were thought to be slumbering, redemanding their place in the sun. None among us would want to renounce his country, sweet and dear to him, and especially none would consent to be governed from a distance, a very great distance and perhaps very badly. In my opinion it is necessary to reject as a redoubtable Utopia the dream of a world state or universal federation, with the single parliament, with a court of justice superior to the nations.44

M. Beernaert continued with a discussion of such points as whether 17 jurists of the first order could be found disposed to expatriate themselves, whether they would be given cases in preference to the free choice of arbiters in the 1899 court, and whether fixed terms for them would not be inclined to retard reference to arbitration. He felt, with Mérignhac, whom he quoted, that "the jurisdiction alone must be permanent, while those who exercise it must be chosen for each case." His whole attitude was expressed in one of his closing sentences: "I believe I have said enough to justify my preference for the present institution, which seems to me to have responded fully to what could be expected of it." And again in his peroration: "May the future, may our common efforts assure new progress. In the field of facts there remains so much to do!"

Gonzalo A. Esteva, first delegate of Mexico, read a declaration for his government to the effect that its instructions and the personal sentiments of the delegates would impel them to vote for the American proposition. "But," he said in conclusion, "the principles which will serve

^{44 2} Deuxième Conférence, 331-332, 332-333.

as a basis for constituting the permanent court are of so great importance that the delegation of Mexico reserves its definitive vote until such time as it shall be informed of the various projects which shall be proposed for the constitution of the court." Serbia, through Milovan Milovan-ovich, abstained in principle, announcing in a declaration that its adhesion would be conditioned on the following:

- 1. That it be previously established by a general convention that arbitration is obligatory for a category of international differences quantitatively and qualitatively justifying, by number and intrinsic importance of the cases to be adjudged, the creation of such an organ of international jurisdiction.
- 2. That, concerning the composition of this permanent court, there should be taken as a determining principle either the absolute equality of rights of all states or, setting aside states and nationalities, the personal qualities of the judges from the point of view of their competence and guaranties of their international impartiality.

Belisario Porras of Panama arose to "support the American proposal warmly." As the representative of a small and a new state, he believed "that the small states have an interest in seeing this principle extended in the widest possible measure. We have an interest in the existence of a single system of international law, because in its present state international law is derived from certain fundamental principles and from certain other principles accepted to regulate certain relations between states. Conflicts inevitably result and these the strongest always profit by. It is therefore necessary to establish a jurisprudence which fixes the value of these different principles. * * * In our days the principles of law are conserved in the bureaus of the ministries of the great Powers, which on each occasion take from their correspondence the despatches and writings which justify them, and, if this justification is not very good, brute force always remains to them to make it accepted."

Jacques Nicholas Léger for Haiti next registered support of the Russian and American propositions, considering them quite as important for small as large states. He mentioned the restricted number of judges suggested, 17 to represent 45 states, and thought that if an electoral college was formed by a grouping of states for their selection rivalries dangerous to peace and concord might be engendered. "Nothing would prevent authorizing each of the signatories of the new diplomatic in-

strument to designate a certain number of jurisconsults destined eventually to form the list of members of the court. Once met in general assembly, those jurisconsults delegated for this purpose by their respective countries would have the mission of designating the colleagues called to constitute the permanent court. The members thus elected would themselves choose their successors and would be divided into series with mandates of unequal length so as to prevent an entire renewal of the personnel of the court. By not replacing all at one time the traditions would be assured, which would permit arriving at the establishment of an international jurisprudence, the decisions rendered being published in a collection edited under the control of the International Bureau." He also discussed the development of international public and private law, and concluded that "this codification seems to be one of the necessary consequences of the establishment of a permanent court of arbitration accessible to all independent states."

José Gil Fortoul of Venezuela next adhered to the American proposal. His speech covered oratorically the suggestions he made in amendment to the American and Russian proposals and which he filed at its close. These read:

1. In accepting his appointment every member of the Permanent Court of Arbitration shall take oath to fulfill his office without fear and with a perfect impartiality; furthermore, he shall engage neither to solicit nor accept, so long as his duties shall last, any decoration or any recompense from a government other than his own.

2. A general list of all persons designated by each of the signatory

Powers shall be drawn up.

Those of these persons who are delegated for this purpose by their respective governments shall meet in general assembly and shall proceed with the election of members of the Permanent Court from the general list.

The Permanent Court thus composed shall be renewable by thirds, and it shall itself select the members who are to replace those whose

mandate expires.

3. The members of the Permanent Court are charged with preparing or causing to be prepared under their high control the codification of the principal rules of international public law and of international private law.⁴⁵

Ruy Barbosa of Brazil followed, an impassioned orator reading a prepared address—as was the rule—and destined in his fixed opposition

⁴⁵ Speech at 2 Deuxième Conférence, 338-339; project at 1034.

to anything less than equality of representation to become almost the only serious opponent of the American and its succeeding projects. M. Barbosa began by adhering to the reserve made earlier by Mexico. His speech, as long as Mr. Choate's and two-thirds the length of Mr. Scott's, can only be summarized by argument:

We are certain that a time will come when regulation of misunder-standings between nations in conflict will never be considered except before this tribunal, if a good organization is given to it. But we are also convinced that this invariability of international judicature can be counted on only as a result of the voluntary assent of all countries in various successive emergencies; and even in the interest of this progress, which will be durable only as it is established in a free manner, it seems to us that we cannot substitute for the spontaneous confidence of states a submission stipulated as a perpetual engagement. * * * (Disputes) cannot be submitted in advance and always to an exclusive and perpetual magistrature without alienating essential elements of national sovereignty. * * *

In carrying (this forced subjection) over into the international order (from the municipal régime), it is not arbitration which would be established. It is another thing. It would create an obligatory judicature among sovereign states as it exists among the subjects of a single sovereignty. * * * The action of civil tribunals ceases from the moment when the parties agree to have recourse to arbiters, and then they are sovereign in the election of the depositories of this conventional justice. Consequently, the individuals themselves choose their judges, since with them always remains the option of preferring arbiters whom they themselves freely appoint to the constituted tribunals. Of this right you would deprive independent nations. They would have only the Hague Court, without other alternative. * * * Since experience is the mistress of nations, they cannot yet find conclusive reasons for subscribing to this infallibility of the single court in international arbitration, without which we do not see why states should be refused the faculty of replacing it by other arbitral judges. * * *

I hope that this court will some day become the areopagus of peoples, acclaimed by the confidence of all. But for this result we cannot replace the work of time by that of constraint. It is always vain to dream to impose confidence. It is not decreed. It is not stipulated. It is produced of itself under the influence of natural causes, like the facts of organic evolution. We desire permanence in recourse to arbitration. But permanence would consist in the obligation to have recourse to arbitration, not in exclusive submission to a permanent court. * * * * * * In the thought of the delegation of the United States the

* * * In the thought of the delegation of the United States the facultative character of the court would not be altered; only the obligation of arbitration would be established, maintaining free choice of

arbiters to the states. This is what the eminent M. Choate has repeated to-day in adopting the Mexican proposition. But it seems to have contrary tendencies. We would gladly be found wrong, but it seems to us there is something in the proposition by which neither the heads of states, officials nor scientific corporations could accept the duties of arbiters except after the prior declaration of the interested parties that they had not been able to agree to have recourse to the Hague Court. This is a wholly arbitrary limitation of the freedom of states in the choice of their arbiters. We could not subscribe to it because in our opinion this freedom does not tolerate limitations. * * * On the other hand, if the refusal to submit to the permanent court is absolutely a thing between the interested parties, and depends on them alone, is it not clear that the very fact of addressing other arbiters supposes, includes and expresses the mutual resolution, on the part of those making it, not to accept arbitration at The Hague? * * * Therefore, in practice, this idea is useless. But in principle it is dangerous, for it pretends to restrain a sovereign and essential freedom which does not suffer restrictions.

* * * Fundamentally we are all equally devoted to arbitration. Brazil solves all questions not settled by other less free and conciliatory methods by arbitration. * * * Only we must not forget there are in established usage great instruments of improvement and pacification as useful as those imagined in our days and that in certain prerogatives of the independence of States are found forces beneficent for equality between small and great, between strong and weak, from which it would be unpardonable to depart. * *

The best inventions may be turned to the injury of those who have conceived them with unqualified good intention. This Permanent Court of Arbitration merits our enthusiasm. But it is human; it is necessary to preserve it from degeneracy. * * * Absolute and exclusive authority is always ready to be corrupted. * * * Would not this institution, of an almost superhuman majesty, be exposed more than any other to the dangers and temptations of our feebleness?

I hope M. Barbosa's argument has been done justice in these extracts, for I do not consider any of them really sound for the subject-matter under discussion. The speech was probably the least notable effort of an important member of the Conference because it was so largely beside the mark. He argued, for instance, that a court with obligatory jurisdiction was objectionable, but that was so clearly admitted in the American proposition that the argument need not have been mentioned except as an academic caution. He argued that the court would kill other less pretentious means of arbitration, but in unmistakable terms its sponsors had already ruled that contention out by making their proposition

additional to all other existing means. The point on derogation of sovereignty is fully met by the recognized distinction of definition that equality means equality of right, not equality of the exercise of right; and it is further null from the fact that, if a sovereign state chooses to limit its sovereignty by treaty, the limitation is not a derogation, but an exercise, of sovereignty itself, restricted in terms and reclaimable at conventional will. This, however, was the only arguable proposition applicable to the subject-matter, except the last point made by the brilliant Brazilian.

Bulgaria followed Brazil, Ivan Karandjulov making in English an interesting speech in which he said of his country that "it ardently desires the coming of an era of justice between nations. For it is not by force of arms that it seeks to reconquer its place among civilized nations. Its population is bellicose neither by nature nor character; it is pacific, laborious and thirsty for knowledge and justice. So the value of each government in Bulgaria is appreciated in proportion to the efforts it makes for the development of her schools and her courts." May the future bear out the characterization in full measure! M. Karandjulov's support of the Russian and American proposals was accompanied by amendments to the American project described in his speech and eventually assuming this form:

I. (Amendments to Art. 1.) A Permanent Court of Arbitration shall sit at The Hague. It shall be composed of fifteen judges, a third of whom shall be renewed every third year reckoned from the date of its composition.

The first as well as the second renewal of judges shall be effected by casting of lots and successive renewals by the expiration of nine years from the date of their election or re-election.

Judges whose names shall be cast in the lots or whose terms of nine years shall have expired may always be re-elected.

Elections of judges shall be effected in the following manner:

Each of the signatory states of the present convention shall designate at least one person of recognized competence in questions of international law and enjoying the highest moral consideration; these persons so designated shall meet at The Hague and shall choose from among them judges to the number required for the composition or completion of the court, each state having a right only to one vote.

The time of the first meeting of the electors who shall choose the first fifteen judges shall be determined and communicated to the signatory states by the International Bureau.

Convocations of the electors to replace the third of the judges or to renew their mandate, as well as to complete their number to fifteen, in cases where there should be vacant places on account of death or other causes, shall be effected at intervals of three years through the same Bureau.

II. (Amendment to Art. 3.) Each of the parties in dispute has the right of challenging:

a. The judge of the nationality of the adverse party;

b. The judges who may have previously expressed a personal opinion

on the affair in litigation to the prejudice of this party;

Each of the judges should have the right of retiring from a case in which he might foresee in one manner or another that his participation would shake the confidence due to judicial authority.⁴⁶

Sir Edward Fry now took occasion to answer M. Beernaert's misgivings and the same suspicion as expressed by others. The American project, he explained, "proposes a new court alongside the present court. The two courts will work to the same end and that one of the two which seems best to respond to the needs of nations will survive. The choice for nations is free, and it is very certain that the most efficacious court will be chosen."

Marquis de Soveral of Portugal had prepared an address four pages long, but did not deliver it. The discussion had already exhausted his speech, and he therefore simply commented that, though Portugal adhered to the project of the United States, "the primary question is the project of a general treaty of obligatory arbitration. It seems to me impossible * * * to create judges before being able to submit causes to them." It is, of course, obvious that the objection was ill taken because the court was intended to be voluntary as to jurisdiction.

Persia, through her first delegate, Samad Khan Momtaz-es-Saltaneh, cordially supported the American proposal, hoping that the committee would adopt the Russian suggestion that the court should always be open.

M. Bourgeois called M. Beaufort of the Netherlands to the chair to register in one of his luminous speeches the status of the discussion before it came to a vote. This time, as usual in such cases, he spoke as the first delegate of France, not as president of the subcommission. It would be a pleasure to give the Bourgeois address in full, but space prohibits and

^{* 2} Deuxième Conférence, 1033; the speech is at 344-345.

one must be content with Dr. Scott's summary in the report. In general he distinguished "between the Permanent Court of Arbitration of 1899 and the proposed court, showing conclusively that each would have its separate and distinct sphere of interest and influence, and that the existence of the two courts would be a double guaranty for the world's progress toward justice and peace." Textually M. Bourgeois said in part:

What we must ascertain is whether, for limited purposes and under special conditions, it is not possible to secure the working of arbitration more quickly and easily under a new form in no way incompatible with the first form.

For questions of a purely legal nature a real court composed of jurists should be considered as the most competent organ. * * * It is therefore either the old or the new system that is to be preferred, according to the nature of the cases.

Thus we see before us as two distinct domains: that of permanency and that of compulsion. However, we reach the same conclusions in both domains.

In the domain of universal arbitration there is a zone of possible compulsion and a zone of necessary option. There are a vast number of political questions which the condition of the world does not yet permit to be submitted universally and compulsorily to arbitration.

Likewise, in the domain of permanency, there are cases whose nature is such as to permit and perhaps to warrant their submission to a permanent tribunal. However, there are others for which the system of 1899 remains necessary, for it alone can give the nations the confidence and security without which they will not appear before arbitrators.

Thus it is seen that the cases for which the permanent tribunal is possible are the same as those for which compulsory arbitration is acceptable, being, generally speaking, cases of a legal nature. Whereas political cases, in which the nations should be allowed freedom to resort to arbitration, are the very ones in which arbitrators are necessary rather than judges, that is, arbitrators chosen at the time the controversy arises. 47

M. Beldiman of Rumania, stating his sympathy with the court project, inquired how the 17 judges were to be appointed, saying that it seemed to him almost impossible to pronounce intelligently on the court while one of its essential and decisive elements was still vague. The United States was unable to answer at the moment, and Rumania accordingly abstained the vote. Turkey abstained for lack of instruc-

^{4 2} Deuxième Conférence, 347-349.

tions. On the question of taking the proposition of the United States (including the Russian project by implication) into consideration the vote stood 28 for and 12 abstentions. The ballot was as follows:

For: Germany, United States, Argentina, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Dominican Republic, France, Great Britain, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Panama, Paraguay, The Netherlands, Peru, Persia, Portugal, Russia, Salvador, Uruguay, 48 Venezuela.

Abstentions: Austria-Hungary, Belgium, Denmark, Spain, Greece, Norway, Rumania, Serbia, Siam, Sweden, Switzerland, Turkey.

The question of organizing the Committee of Examination was in order. "Many of our colleagues," said M. Bourgeois, "have expressed the desire to see the propositions studied by a special Committee of Examination, very restricted. I believe, gentlemen, that it is well for this committee to remain in close contact with the first committee, already charged with working out a project of obligatory arbitration. The two matters present so great an affinity as not to prevent work in common. I therefore have the honor to propose the following combination:

The Committee of Examination has been composed by two successive operations, the second completing the first. It is therefore made up as follows: To the members elected from the outset we have added seven new colleagues for the study of questions concerning obligatory arbitration. They form a special subcommittee in the heart of the Committee of Examination, the Committee of Obligatory Arbitration. I propose to-day, gentlemen, to appoint a new special subcommittee which we will call, if you wish, Subcommittee B, which with the members of the initial Committee of Examination will study the questions relative to the permanent court.

Assent was given and Messrs. Choate of the United States, Baron Marschall von Bieberstein of Germany, Eyschen of Luxemburg, Renault of France, Beldiman of Rumania, and Carlos G. Candamo of Peru were special appointees to the new Committee of Examination B.

⁴⁸ Uruguay, through Juan P. Castro, reserved the right of "examining whether the organization of the permanent court offered all guaranties which should be expected of it."

⁴⁹ For the appointment of this committee see 2 Deuxième Conférence, 227.

Between August 3 and 13 we have no official record of action concerning the project of what was to be called the Court of Arbitral Justice. The United States took advantage of the fact that Germany and Great Britain had assumed leadership in championing an international court of prize to enlist their delegations in behalf of the proposed new arbitral court. "Such an organization appeared to be a thoroughly appropriate step, which met also the purposes which Germany sought to attain," said the German report on the Conference.⁵⁰ It was extremely fitting that Germany should participate in launching the project, for it had been felt that her attitude was very conservative and anything acceptable to her would likely meet the susceptibilities of other states. Great Britain was properly associated with the preliminary work because of her deep interest in, and her historic sponsorship of, the Permanent Court. Russia had virtually retired her project and M. de Martens was so busy with other features of the Conference work that failure to associate him with the new stage of the project was natural. But the advice of her delegation was by no means lacking.

What happened between August 3 and 13 was the elaboration of a new project ⁵¹ by Germany, the United States and Great Britain. I believe I am not far from the truth in suggesting that Herr Kriege, Dr. Scott and Eyre Crowe, technical delegates of these respective Powers, were jointly responsible for the resultant project of convention, in full harmony with the other members of their delegations. This project was a new and much more elaborate thing than the American proposal, and it may be said that the idea of the projected court took definite form only in its twenty-six articles.

The first session ⁵² of Committee of Examination B was held on Tuesday morning, August 13. It opened with the deposit of this joint project and an opening speech by Mr. Choate, followed immediately by Baron Marschall von Bieberstein and Sir Edward Fry. M. Asser called attention to what was later called the special delegation, which was a Dutch suggestion. M. Bourgeois spoke a few words, closing with the appeal, "Baron Marschall has compared the project to an admirable frame;

Denkschrift über die zweite Internationale Friedenskonferenz, 3.

⁵¹ 2 Deuxième Conférence, 593.

⁵² Ibid., 593-601.

I ask of all of you that a picture be put into the frame." The discussion . of the articles forthwith began on the first reading, which occupied five sessions, August 13, 17, 20, 24 and 27. On Article 1 a discussion of the then title, "High International Court of Justice," took place with the result of eliminating the word high, and as this with other demanded changes forecast a thorough revision of the text, M. Bourgeois, before proceeding further, named an Editing Committee, Heinrich Lammasch of Austria-Hungary, M. Asser of the Netherlands, Louis Renault of France, Eyre Crowe of Great Britain, Herr Kriege of Germany, and James Brown Scott of the United States. In the first session six articles were discussed and sent to this committee for revision. The second session dealt primarily with the crucial question of assignment of judges. Lu Tseng-Tsiang of China opened with a proposal for their distribution on the basis of the fiscal quotas in support of the Bureau, a purely voluntary order. Dr. Scott in a masterly address 53 developed the bases of the German-American-British plan and introduced the table as it is now known, minus the assignment of substitutes, but with a tabular view of years of state service appended. 54 The session went through Article 15 of the project. Ruy Barbosa of Brazil opened the third session with a speech introducing a project with the following bases:

I. For the composition of the new Permanent Court of Arbitration each Power shall name, under the conditions stipulated by the Conference of 1899, one person capable of exercising acceptably as a member of this institution the functions of arbiter.

It will have, moreover, the right of naming a substitute.

Two or more Powers may come to an understanding for the designation in common of their representatives in the court.

The same person may be designated by different Powers.

The signatory Powers will choose, as far as possible, their representatives in the new court from those who compose the present court.

- II. Once the new court is organized, the present court will cease to exist.
- III. Persons selected will sit for nine years, being removed only in cases where, according to the legislation of their respective countries, irremovable magistrates lose their mandate.
- IV. No Power can exercise its right of appointment save by engaging to pay the honoraria of the judge it designates, and by making the

^{52 2} Deuxième Conférence, 606-612; American Addresses, etc., 99-103.

⁵⁴ Ibid., 609-612, 1040-1043; American Addresses, 204.

deposit each year, in advance, under the conditions which the convention shall fix.

V. For the court to deliberate in plenary session the presence of at

least one-fourth of its appointed members will be necessary.

In order to assure this possibility, the appointed members will be divided into three groups, according to the alphabetical order of the

signatures to the convention.

The judges classed in each of these groups will sit by turn for three years, during which they must establish their residence in a place whence they can reach The Hague within 24 hours from the first telegraphic notice.

However, all the members of the court have the right, if they wish, always to sit in plenary session, although they do not belong to the group specially called to it.

VI. The parties in conflict are free either to submit their controversy to the plenary court or to choose to solve their litigation, in the body of the court, the number of judges which they shall agree to sanction.

VII. The court will be convoked in plenary session when it will have to judge litigations the decision of which has been confided to it by the parties, or, in affairs submitted by the litigants to a lesser number of arbiters, when they themselves appeal to the full court for solution of a question arising between them during the judgment of the case.

question arising between them during the judgment of the case. VIII. To complete the organization of the court upon these bases, everything that is not contrary and appears to be convenient to adopt in the dispositions of the Anglo-German-American project will be adopted.⁵⁵

When Article 16 relating to the competence of the court was reached there was a lively exchange of views and a number of suggestions were made. M. Bourgeois closed the session by the announcement that the German-American-British proposition would be "brought up to date by its authors and distributed as a second corrected edition to all members of the First Subcommission that they might be kept informed" of the work. This was done between August 20 and 24, when the discussion was resumed with Article 19 (old Article 16) which was virtually given a second reading. The Editing Committee had found it necessary to make three more articles in the part already discussed and had added three from the Prize Court Convention in the part to be discussed, so that the second edition of the project contained 32 articles. The session discussed Articles 20 and 21 (old Articles 17 and 18) at length. In the fifth session M. Barbosa of Brazil made his third set speech on the equality of states,

⁵⁵ 2 Deuxième Conférence, 620-621, 1047-1048.

and Mexico registered its inability to "acquiesce to any convention in which all the states called to the Peace Conference are not considered on the basis of the most absolute and perfect equality." The protestants agreed with M. Bourgeois that their declarations did not prevent the discussion continuing, the rest of the revised project being rapidly passed in first reading on the assent of Mr. Choate to M. Barbosa that the table of rotation of judges was reserved therefrom.

The second reading began in the sixth session on September 2 on the basis of the third edition of the German-American-British project, which now contained 37 articles owing to revision and rearrangement by the authors. This session may be considered the critical one for the project. M. de Martens had offered and secured a verbal alteration in Article 1, and M. Lammasch had proposed the eventual name, Court of Arbitral Justice, when Brazil announced her abstention from further discussion of the project, "not being in a position to judge what attitude the Brazilian Government ought to take with regard to the new institution." Mexico, Rumania, Belgium and Greece followed with the same declaration, making five states holding aloof on a non possumus. The reading registered a vote article by article, and the abstentions impelled Sir Edward Fry to withdraw Articles 6 and 7 (relating to the assignment of judges) from this second reading, Article 8 being likewise held out by Herr Kriege. This second reading was completed in the seventh session on September 5.

It was the obvious tactics that the pilots of the project employed. The hitch was on the division of judges, so that everything but that was rushed through to decision, leaving all possible burden of proof on the dissidents. It was now possible to marshal all the argumentative forces on that critical point. When the reading was complete Mr. Choate made a masterly and eloquent appeal to the conclusion that "the absolute and equal sovereignty of each of the forty-five Powers ⁵⁶ was duly respected and their differences in other respects not lost sight of" in the scheme of the three Powers. ⁵⁷ M. Barbosa ceased to abstain long enough to reply. M. Bourgeois then invited Messrs. Nelidov of Russia, Tornielli

⁵⁰ Honduran delegates were now admitted.

⁵⁷ See this speech in American Addresses, etc., 103-109; 2 Deuxième Conférence, 683-687, 689-693.

of Italy, Choate, Marschall von Bieberstein, Barbosa of Brazil, and Mérey of Austria-Hungary to constitute with himself a subcommittee to attempt a solution of the composition of the court. This committee wrestled with the question until September 18, when it recorded a failure to find a solution and referred the question back to the Committee of Examination. M. Barbosa again spoke and Sir Edward Fry proposed a resolution favoring the principle of the proposed court. Mr. Choate made a last eloquent appeal of the proposed court. He submitted a plan which was voted down, after M. Barbosa and others had discussed it, 5 for and 9 against. The project in its third edition was then put to vote, omitting Articles 6, 7 and 8 on the composition of the court, and was thus passed in third reading, 8 to 5 with 2 abstentions. Sir Edward Fry's motion was then put in two parts. It reads:

The Conference recommends to the signatory Powers the adoption of the project hereunto annexed of a convention for the establishment of a Court of Arbitral Justice, and putting it in force as soon as an agreement has been reached upon the selection of judges and the constitution of the court.

It was carried in both halves by the same vote:

For: The Netherlands, Germany, Great Britain, United States, Italy, Portugal, Russia and France.

Against: Greece, Peru, Brazil, Rumania and Belgium.

Abstained: Austria-Hungary and Luxemburg.

The First Commission was the next stage for the proposal, now in its excised fourth edition. At the commission's eighth session on October 9 general discussion of the report of Dr. Scott on the Court of Arbitral Justice was on the order of the day. Mexico, Switzerland, the Dominican Republic, Denmark, Brazil, Guatemala, Norway, Belgium, Rumania, Russia, China and Persia all had speeches or comments. At the ninth session on October 10 ⁶¹ it was decided to read the articles of the fourth edition, and after discussion on Articles 1, 2, and 5 the project was voted, 37 to 3 with 4 abstentions. Belgium, Rumania and Switzerland

^{18 2} Deuxième Conférence, 694-695.

 $^{^{59}}$ Ibid., 697–699; American Addresses, etc., 109–111.

[∞] 2 Deuxième Conférence, 144-160.

⁶¹ Ibid., 177-190.

voted no, and Denmark, Greece, Uruguay and Venezuela abstained. Sir Edward Fry's motion was brought forward but, on the decision that it was technically a declaration, was sent along to the plenary session to come under the unanimity rule prevailing there.

This work of the First Commission came before the ninth plenary session of the Conference on October 16, when President Nelidov in his introductory address said in part:

The practice of the eight years elapsed since the First Conference has * * * also rendered desirable the enlargement and completion of the institutions then created with a view to extending the field of action of international justice. * * * Serious projects have been put forth for study * * * and those who are especially versed in judicial questions have particularly taken an active part in their discussion. This study, as conscientious as learned, * * * will furnish to those who will occupy themselves with it later very valuable materials which do honor to this Conference.

We have, however, had to recognize that the agreement necessary for the establishment and functioning of the institution we had in view could not be reached, and we have been obliged to confine ourselves to affirming the principles unanimously admitted and to abandon to our governments the task of completing our work by reaching an understanding on the means of putting it into practice. It is in this sense that the * * * wish which is going to be submitted to you has been prepared. 62

Dr. Scott as reporter followed with this formal statement:

It is not necessary to explain to you the project which we are charged with submitting to your high consideration. You understand it sufficiently, and you know moreover that Committee of Examination B of the First Subcommission has discussed it long and carefully before adopting it. The First Commission has approved it in turn with a slight modification of the text of Article 2 as elaborated by the Committee of Examination. We are not unaware that the work presents omissions and difficulties even yet. It is not necessary to say that the project does not contain precise dispositions upon the manner of constituting the court nor upon the choice of judges. These questions have been long discussed in the committee without finding a solution acceptable to all the states represented. It is hoped that an agreement will not be delayed on this subject and it is with this hope that the committee has pronounced in favor of adopting the recommendation, which I have the honor to ask the Conference to be good enough to sanction by its vote.

The announcement of abstentions or reserves followed, and the vote for Sir Edward Fry's wish as above carried it, 38 for and 6 abstentions, as follows:

For: Germany, United States of America, Argentine Republic, Austria-Hungary, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, the Dominican Republic, Ecuador, Spain, France, Great Britain, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Persia, Portugal, Russia, Salvador, Serbia, Siam, Sweden, Turkey, Venezuela. Abstentions: Belgium, Denmark, Greece, Rumania, Switzerland, Uruguay.

Between the day of that vote and the present time, almost nine years, what Secretary Root in his instructions to the delegates termed the "continuous process through which the progressive development of international justice and peace may be carried on" has been satisfactorily shown. The authors of the German-American-British project realized that a real world court must follow the spirit rather than the letter of sovereign equality, that all communal progress involves abnegation for the sake of the general good by facing facts as they are. The authors followed the logic of their own minds, and in the interval a new examination of sovereignty by several publicists has strengthened their conclusion. The majority of the states of the world stand committed to the Court of Arbitral Justice as proposed; 38 out of 44 are committed to its principle and have been for nearly nine years. Around the whole proposition has been growing up a quantity of public opinion of importance.

President Roosevelt in his message to Congress of December 3, 1907, said truly that the remaining unsettled question of the composition of the court "is plainly one which time and good temper will solve." ⁶³ Mr. Choate's report as head of the American delegation concludes on this subject: "A little time, a little patience, and the great work is accomplished." ⁶⁴ "Germany," said the report of delegates of that state, "stands ready to cooperate in the establishment of the court." ⁶⁵

⁶³ For. Rel., 1907, lxiii.

⁶⁴ Ibid., 1178.

⁶⁵ Denkschrift, etc., 3.

The French delegation in its report said: "Each of the states must exert special efforts to carry out, as far as possible, the *voeux*, resolutions or recommendations, by which the Conference, in matters upon which it could not reach a conclusion, has emphatically signified its desire to see the governments complete its work. It will suffice to refer to the negotiations requisite to give definitive form to the permanent Court of Arbitral Justice, whose operation depended upon an agreement regarding the manner of selecting the judges." ⁶⁶ Sir Edward Fry of Great Britain made a further comment:

We cannot but hope that the difficulties which we have been unable to overcome may hereafter be surmounted, and that our labor as pioneers may in the end not prove entirely fruitless. * * * The claim of many of the smaller states to equality as regards not only their independence, but their share in all international institutions, waived by most of them in the case of the Prize Court, but successfully asserted in the case of the proposed new Arbitral Court, is one which may produce great difficulties, and may perhaps drive the greater Powers to act in many cases by themselves.⁶⁷

The suggestion of Sir Edward Fry was the one adopted as practical in the interval until the Third Hague Conference. In an identic circular note of October 18, 1909, a solution was proposed by Secretary Knox, which awaits only the ratification of the International Prize Court Convention. It will be remembered that this court was to be organized on the same basis as the Court of Arbitral Justice and that in view of its restricted scope no successful objection was made to the plan. The American solution of the Arbitral Court impasse was that "any signatory of the convention for the establishment of the Prize Court may provide farther in the act of ratification thereof that the international court of prize shall be competent to accept jurisdiction of and decide any case * * * submitted to it for arbitration," adopting the rules of the draft Court of Arbitral Justice convention therefor. **

Since 1907 the effort to codify the maritime law of war in the Declara-

Ministère des Affaires étrangères. Documents diplomatiques. Deuxième Conférence internationale de la paix, 1907, 116.

⁶⁷ Miscellaneous No. 1 (1908), Parl. Pap., 1908, exxiv, 20 and 21.

See this JOURNAL, Vol. 4, pp. 163-166, and SUPPLEMENT, Vol. 4, pp. 102-114, at 109 ff.

tion of London had been made and the ratification of the International Prize Court Convention hinged consequently on the Declaration. Great Britain's action was the key to the situation, and in 1911 she tried to secure a free hand for ratifying the Declaration by a naval prize bill altering her municipal law to accord with the international regulations. This failed and an impasse was again encountered, a revised naval prize bill being introduced in the spring of 1914. This being passed, the Declaration of London and the International Prize Court Convention could be ratified by Great Britain. The great Powers would then no longer withhold action and, with the International Prize Court Convention effective, the way would be open for investing that court with all the functions of the Court of Arbitral Justice in so far as the Powers might agree thereto.

Such was the situation when the thunder clouds of European politics burst in the storm of war. Every one who followed international affairs diligently knew that Europe's political skies were stormy and concealed a gathering gale. Those who followed all elements of the situation offset against the lowering conditions the dispelling effect of increasing international cooperation, and were hopeful that, instead of a storm, there would be only a series of atmospheric disturbances, a succession of crises dissipating danger little by little. This process had operated, and, if the crisis of 1914 had been delayed a few months, might have operated again. In the fatal August of that year, the Netherlands ministry for foreign affairs had planned, under the stated inspiration of Dr. Scott, to propose the establishment of the Court of Arbitral Justice for those states willing to participate. If such a proposal had been realized, the newly existent court would probably have been the only present battlefield in Europe. The consecution sketched above would logically have followed from the prestige of the new court.

Yet that would be only an evasive solution of the problem, which at bottom is to get sovereign states really working together in something more than administrative or mere legislative fields. Probably no one seriously doubts that this is the era of internationalism, that the work of the world has overstepped national boundaries never to retrograde. But internationalizing has not yet actually advanced far. The fifty or so public international organizations—unions, bureaus, institutes, etc.,—

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are purely administrative. The codifications of law in Hague conventions and otherwise have not made definite advances over what existed before; they have simply registered the state of progress as the thermometer, which does not make temperature, but registers its degrees. To be sure, administration and codification will have their effect in making real executive and judicial functions internationally necessary and easier to procure, but they are not of the latter orders. The Court of Arbitral Justice was the first serious attempt to create actual judicial functions internationally.

Several ways out were offered. Use of the special International Prize Court for general jurisdictional questions would have been a certain success within its limit of acceding powers; such a solution would draw a line between ins and outs among the states that would amount to an evasion of the basic question. Another solution was a division of work as is not uncommon among municipal courts. Sections for public and private international law; a series of circuit courts and an appellate body; a distribution of jurisdiction by character of case, these and others had been suggested with the idea of facilitating a solution through giving more states judge-service in the system. But the fact remained that the only truly international court would be that suggested in the German-American-British draft, containing seventeen members. standing that eight Powers were to have judges sitting all the time, and that 36 states were annually to divide nine judges and seventeen substitutes among them in cycles of twelve years, the distribution assigned accurately represented the material interests concerned. Over a dozen alternatives were suggested but none received any consideration, comparatively. Evidently, therefore, the question remaining was the parceling of seventeen judges among 45 or so states.

Then came the war to throw a lurid light upon the world's lack of judicial machinery for absorbing the shock of international friction. Belligerents and neutrals alike see the world henceforth as a different place, where states must be more intimately related to each other, and few of them omit from their programs for the future the necessity of a

⁶⁹ For a technical analysis of the plan and the proposed alternatives see a paper in the Proceedings of the American Society for Judicial Settlement of International Disputes, 1913, on "The Composition of the Court," 153–171.

genuine court. Unofficial thought and propaganda is unanimous on the necessity for a world judicial system after the war. Where consideration has been devoted to the practical problem of the composition of the court, election of judges has most often recurred. The suggestions vary in detail but essentially consist of free state nominations followed by eliminative election by states. In several variations this plan was suggested in 1907. This is probably the plan most promising of general acceptance, for it preserves the cardinal feature of a small court and insures equal participation by states in selection of judges while equitably disregarding their nationality in favor of their internationally recognized competence.

For eight years the minds of the world's publicists have been concentered on the desideratum of the Court of Arbitral Justice, and what was novel in 1907 is compelling now. As before 1899, numerous suggestions have been made looking to a solution of the problem involved—the composition of a real court. It is inconceivable that among these suggestions some will not inspire a solution of the immediate difficulty as the projects before 1899 made the actual proposals then possible and practical. And as the intelligence of the civilized world was concentered in 1899 on securing any court, and in 1907 on making a real court, at the end of the war we may expect to see it demanding the real birth of the Court of Arbitral Justice regardless of equality susceptibilities, which are not really jeopardized in fact and are actually much safer in the hands of judges than of diplomats backed by the power of great states. "In the conflicts of brute force, where fighters of flesh and with steel are in line, we may speak of great Powers and small, of weak and of mighty," said Léon Bourgeois. "When swords are thrown in the balance, one side may easily outweigh the other. But in the weighing of rights and ideas disparity ceases, and the rights of the smallest and the weakest Powers count as much in the scales as those of the mightiest."

DENYS P. MYERS.

⁷⁰ See particularly Proceedings of the American Society for Judicial Settlement of International Disputes, 1913, 165–168.

THE RELATIONS BETWEEN THE UNITED STATES AND PORTO RICO *

(PAST, PRESENT AND FUTURE)

Part II (Continued)

2. EFFECTS OF THE ACQUISITION

In approaching the discussion of the effects of the acquisition of Porto Rico as a result of the Treaty of Paris of 1899, we are confronted by one of the most difficult problems arising in the consideration of the relations between the United States and Porto Rico. The difficulty is due in a great measure to the absence of a positive, unequivocal and unanimous opinion of the Supreme Court in the decision of the so-called Insular Cases, which have given rise to so much doubt, uncertainty and difference of opinion among lawyers in regard to this vital subject.

If the acquisition of Porto Rico had been the only one made by the United States at that time, the problem would have been comparatively easy. It would have been enough, perhaps, to turn to the earlier precedents laid down by the Supreme Court to find sufficient guiding light and ample authority to arrive at a satisfactory solution. Congress itself, probably, would have rendered it unnecessary to appeal to the Supreme Court by doing complete justice to the people who had received the United States with such sincere demonstrations of rejoicing, friendship and affection.

But, unfortunately, together with the acquisition of Porto Rico there came that wonderful adventure of the Philippines, which appeared so seducing, so alluring, and so irresistible.⁷⁰ It was a golden dream at first. It seemed for a moment that in this extraordinary acquisition "so lightly undertaken and accomplished with so little pride of achievement," there was nothing else than the fulfillment of a great mission

^{*} Continued from the January, 1916, number, p. 65.

⁷⁰ See Article III of the Treaty of Paris, supra.

of liberation. There were those at that time who believed that the United States must not give back to Spain any portion of the earth in which to continue her abominable misrule; they thought that the United States had contracted a moral duty before the world to annex every bit of these portions although this meant to enter upon an immense adventure of incalculable possibilities.

"It is, in a word," said an editorial in the New York Sun, according to Mr. Hall, "for the interest of the whole civilized world that all of Spain's colonies, with the possible exception of the Canaries, should be turned over to us. It is for the world's interest because, in her hands, they always have been, and always would be, a menace to the general peace." In an address delivered by a very distinguished American at the laying of the cornerstone of the new State Capitol of Pennsylvania, he said:

Call it imperialism, if you will, but it is not the imperialism that is inspired by the lust of conquest. It is the higher and nobler imperialism that voices the sovereign power of the nation and demands the extension of our flag and authority over the provinces of Spain, solely that "government of the people, by the people and for the people shall not perish from the earth."

As a practical proposition it was impossible to concede to those islands the guarantees and privileges, which, upon the acquisition, were *ipso facto* secured to them by the Constitution of the United States. A community of interests and a desire to commingle were entirely lacking between some of these peoples and the Americans, and their wholesale immigration into this country would have created a serious situation. It seemed entirely out of the question to admit to the privilege of American citizenship the un-Christian, the semi-savage and nondescript tribes which compose a large proportion of the native population of the Philippine Islands. It was evident that these tribes ought not to be permitted to enter into and constitute an integral part, and influence the political, social and economical life, of this highly developed and civilized country, and that the nation ought to be protected against all possible complications arising out of their hurried acquisition.

On the other hand, owing to the peculiar and strange conditions

prevailing in those islands, it was thought impracticable, and even injurious to the best interests of their people, to undertake their government according to and in conformity with American constitutional principles and theories; that any attempt that should be made in this direction would necessarily result in a collapse of the whole governmental structure which Spain had been so laboriously constructing during so many years of political blunders and misrule; and that such collapse would perforce bring about a state of general confusion which must needs result in material injury not only to the islands and their inhabitants, but also to the success of American government there.

It was therefore of the greatest importance that the government should be given absolutely free hand to deal with the islands and peoples in the manner and form that would best answer to the necessities of the moment. It was of the greatest importance that the government should be in a position not only to solve every conceivable problem or difficulty that should be presented in respect to the administration, government or control of the islands and their inhabitants as it should be deemed most advisable or convenient, according to the particular circumstances of the case, but also to regulate, if necessary, the entrance of such peoples into the United States.

It was quite sure, however, that these desirable results could not be achieved unless in some way or other such action of the government was grounded upon a more or less strong shading of legal sanction, and the question, therefore, narrowed itself to the problem of *devising* some scheme, some means, some plausible reason, even if a reason of art, to thwart the legal, the natural, the logical effects of the acquisition.

The fact that the Philippines continued in a state of revolt after the formal cession of the archipelago by Spain to the United States, although there may have been some hints to that effect from high authority at the time, was not considered strong enough or sufficient. It was a reason too precarious and unstable. The state of revolt could not prevent of itself the incorporation of the islands and their heterogeneous inhabitants into the national unit as part of the territory and people of the United States. A rebellion is a fact of an internal character in itself, and the most that it can give rise to is a suspension of the constitutional guarantees. It could not bar or destroy the relations legally created

by the fact of the acquisition. And besides, assuming that such relations were suspended during the uncertain period of the rebellion, the reason still would have been precarious; for the rebellious elements might be subdued at any time. The *exclusion*, if that name can be properly applied to the object in view, had to be founded on more solid and permanent grounds.

It is an interesting fact that while Porto Rico and the Philippines are exactly antipodes, and there is no good earthly reason why they should be joined and put up together in the same wrapper like two chattels of the same description, it soon became apparent that any rule that should be framed with the purpose of evading the effects of the acquisition in the Philippines must constitute either an unwarrantable discrimination against those islands or subject Porto Rico to the same This was considered so simply because having been acquired under the same grant from Spain, their legal status was identically the same, and therefore, in contemplation of law they could not be differentiated from each other in respect to the doctrines that should be worked out in order to effect the exclusion. Discrimination, of course, was apt to prove too severe a test for the whole project, and mainly for this reason it had to be abandoned. As it was impracticable to make the exclusion refer only to the Philippines, it became then a case of necessity to have civilized and Christian Porto Rico follow the same undesirable fate of those distant and decidedly oriental islands. Furthermore, as the gods would have it, Porto Rico, the trusting and confiding little island of the Caribbean, was used as the "experimental station" for testing the novel schemes which, if legitimated, were to be applied seriously in the Philippine Islands or elsewhere.

It is true that it was a matter of the greatest national importance to guard against the innumerable possibilities attending the acquisition of distant and noncontiguous territories inhabited by alien races differing from the American people in many important respects; but as neither the Constitution nor the act of cession contained in this particular any provision which might operate to prevent the logical results of the acquisition from taking effect, opinions differed even among the most learned and experienced in these matters, not only as to the feasibility of the exclusion after the acquisition, but also as to the legal doc-

trines that would have to be laid down in order to achieve the results desired.

It is no wonder, therefore, that the new doctrine which was at last imperfectly developed should be wrapped up in a mass of judicial uncertainties which becloud and obscure the effects of the acquisition and place Porto Rico and the Porto Ricans in a strange and anomalous condition, subversive of American institutions and revolting to their sense of self-respect and amour propre.

According to this new doctrine it became possible to hold, without any of the dangers and inconveniences apprehended, not only the Philippine Islands, but any other territories and peoples that might be acquired in the future by the United States, whether as a result of successful wars or by more peaceful means, which necessity or convenience might suggest for the gradual development of what Chief Justice Marshall was pleased to call the American Empire. Being held as something separate and distinct from the territory and people of the United States, such territories and peoples, under this doctrine, may be managed and governed according to the given policy of the government, without regard to constitutional provisions which might hinder, obstruct or render impossible the carrying out of such policy in whole or in part.

But, however desirable these results might be in respect to the Philippine Islands or other territories of a similar structure, the fact can not be concealed that as regards Porto Rico they constitute a grievous injustice.

As it is, this doctrine deprives Porto Rico and the Porto Ricans of their legitimate status before the world and within the nation as an integral part of the territory and people of the United States, and being denied the benefits of the Constitution, their condition resembles in a great measure that under which they were held during the military régime prior to the ratification of the Treaty of Paris, which marked the completion of the acquisition. They are indeed, by virtue of the Constitution, subject to the legislative authority of Congress instead of being subject to that of the President, as commander-in-chief of the army, as was the case during the military régime; but so long as the Constitution is held not to control the legislative action of Congress in

dealing with the newly acquired territories, before they are formally declared to be incorporated into the territorial unity of the United States, there is not much difference between the powers which Congress might exercise over them and those which the President, as commander-in-chief of the army, might make use of in any given territory placed under the military authority of the United States.

Under the new doctrine, Porto Rico and the Porto Ricans would seem to be considered as a peculiar sort of acquisition, with which, apparently, the government can do as it pleases, with no other protection for them against misuse or abuse of power by Congress than "certain principles of natural justice inherent in the Anglo-Saxon character," and the remark that they are not to be regarded as "subject to an unrestricted power on the part of Congress to deal with them upon the theory that they have no rights which it is bound to respect."

But over and above all the existing uncertainty and confusion upon the subject, it is obvious, however, that by the acquisition, the relations between the United States and Porto Rico underwent an extraordinary change from the point of view of both international law and the Constitution, and whether for better or for worse, whatever the present state of things in regard to Porto Rico may be, that change has given rise to new rights, to new duties, and to new obligations, which, although involved in considerable doubt, neither the United States nor Porto Rico can shun, annul or avoid.

3. THE INSULAR CASES AND THE STATUS OF PORTO RICO

From the Porto Rican point of view it is really a pity that when called upon to decide the issues involved in the Insular Cases, the Supreme Court, apparently, could not avoid indulging in the consideration of the political aspect of the problems which at that time were uppermost in the minds of the American people. This was so, probably, because at times that highly respected tribunal, by virtue of its extraordinary jurisdictional powers over the legislative and executive departments of government, feels constrained to consider matters and arguments which are not strictly judicial as controlling reasons for their decision. Hence the diversified division of opinions among its venerable and illustrious members in those now famous cases. If the judges who

sat in those cases could have detached themselves from the vexing puzzles presented by the acquisition of the Philippine Islands, there would have been, perhaps, in our estimation, more harmony and uniformity in their opinions and, consequently, less ambiguity as to the real place which Porto Rico and the Porto Ricans occupy in the great American family.

The leading judgments in the Insular Cases referring to Porto Rico correspond to four different stages in the relations between that country and the United States, and may be conveniently grouped in the following order:

Dooley v. United States.⁷² This case relates to the recovery of certain duties exacted and paid under protest at the port of San Juan, the capital of the island, upon several consignments of merchandise imported into Porto Rico from New York between July 26, 1898, and May 1, 1900, under the terms of a proclamation of General Miles of that date, directing the exaction of the former Spanish and Porto Rican duties, under a customs tariff for Porto Rico proclaimed by order of the President on August 19, 1898, and under an amended customs tariff promulgated January 20, 1899, also by order of the President.

By referring to the first part of this article ⁷³ it will be noticed that the collection of these duties took place during the whole period of military activities of the United States forces in the island, comprising the military invasion and occupation and the military régime after the formal acquisition of the island, but prior to the taking effect, May 1, 1900, of the law already mentioned ⁷⁴ temporarily providing "revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, and commonly known as the Foraker Act.

This period of military activities, although apparently resting upon the same legal foundations throughout its whole duration, is, however, as already suggested, ⁷⁶ very sharply divided, in contemplation of law, by the exchange of ratifications of the Treaty of Paris, into two different parts which must be distinguished from each other. This is

^{72 182} U.S. 222.

⁷⁸ This JOURNAL, Oct. 1915, pp. 887, 900, 906.

⁷⁴ Ibid., p. 911.

⁷⁵ Ibid., pp. 908 et seq.

obviously so when it is considered that by the formal ratification of that treaty the cession of Porto Rico by Spain to the United States was solemnly and completely effected. The first part of this rather short military period comprised the military invasion and occupation of the island, and during it the relation between the United States and Porto Rico, as already observed, was international in character and had to be governed by the laws of war relating to the invasion and military occupation of foreign territory by a hostile army, which must make every necessary provision for the carrying on of government and its necessary agencies.

In the case under consideration the court recognized the distinction which we have just noted and held that as to the duties exacted by the military authorities of the United States during the first part of the period of military activities in the island, they had been properly and legally exacted under the war power, and to this all the Judges unanimously assented, for the reason that Porto Rico was, at that time, foreign territory in the military possession of the United States.

Commenting upon the case of Cross v. Harrison π on this subject the court said:

Upon this point that case differs from the one under consideration only in the particular that the duties were levied in Cross v. Harrison upon goods imported from foreign countries into California, while in the present case they were imported from New York, a port of the conquering country. This, however, is quite immaterial. The United States and Porto Rico were still foreign countries with respect to each other, and the same right which authorized us to exact duties upon merchandise imported from Porto Rico to the United States authorized the military commander in Porto Rico to exact duties upon goods imported into that island from the United States. The fact that, notwithstanding the military occupation of the United States, Porto Rico remained a foreign country within the revenue laws is established by the case of Fleming v. Page, 9 How. 603, in which we held that the capture and occupation of a Mexican port during our war with that country did not make it a part of the United States, and that it still remained a foreign country within the meaning of the revenue laws. The right to exact duties upon goods imported into Porto Rico from New York arises from the fact that New York was still a foreign country with respect

⁷⁶ This Journal, Oct. 1915, pp. 901 et seq.

^{77 16} How. 164.

to Porto Rico, and from the correlative right to exact at New York duties upon merchandise imported from that island.

The harmony of the court disappears, however, when it comes to deal with the second part of the military period, that is to say, with that portion of the case which relates to import duties laid and paid during the military régime following the exchange of ratifications of the Treaty of Paris.

In announcing the majority opinion of the court upon this particular subject, Mr. Justice Brown said:

Different considerations apply with respect to duties levied after the ratification of the treaty and the cession of the island to the United States. Porto Rico then ceased to be a foreign country, and, as we have just held in De Lima v. Bidwell, the right of the collector of New York to exact duties upon imports from that island ceased with the exchange of ratifications. We have no doubt, however, that, from the necessities of the case, the right to administer the government of Porto Rico continued in the military commanders after the ratification of the treaty, and until further action by Congress. Cross v. Harrison, above cited. At the same time, while the right to administer the government continued, the conclusion of the treaty of peace and the cession of the island to the United States were not without their significance. By that act Porto Rico ceased to be a foreign country, and the right to collect duties upon imports from that island ceased. We think the correlative right to exact duties upon importations from New York to Porto Rico also ceased. The spirit as well as the letter of the tariff laws admit of duties being levied by a military commander only upon importations from foreign countries; and while his power is necessarily despotic, this must be understood rather in an administrative than in a legislative sense.

Then he proceeds to consider the limitations imposed upon the legislative powers of military commanders in the conquered territory and concludes his remarks by saying:

Without questioning at all the original validity of the order imposing duties upon goods imported into Porto Rico from foreign countries, we think the proper construction of that order is, that it ceased to apply to goods imported from the United States from the moment the United States ceased to be a foreign country with respect to Porto Rico, and that until Congress otherwise constitutionally directed, such merchandise was entitled to free entry. An unlimited power on the part of the Commander-in-Chief to exact duties upon imports from the States

might have placed Porto Rico in a most embarrassing situation. ratification of the treaty and the cession of the island to us severed her connection with Spain, of which the island was no longer a colony, and with respect to which she had become a foreign country. The wall of the Spanish tariff was raised against her exports, the wall of the military tariff against her imports, from the mother country. She received no compensation from her new relations with the United States. If her exports, upon arriving there, were still subject to the same duties as merchandise arriving from other foreign countries, while her imports from the United States were subjected to duties prescribed by the Commander-in-Chief, she would be placed in a position of practical isolation, which could not fail to be disastrous to the business and finances of the island. It had no manufactures or markets of its own, and was dependent upon the markets of other countries for the sale of her productions of coffee, sugar and tobacco. In our opinion the authority of the President as Commander-in-Chief to exact duties upon imports from the United States ceased with the ratification of the treaty of peace, and her right to the free entry of goods from the ports of the United States continued until Congress should constitutionally legislate upon the subject.

The dissenting opinion was forcefully voiced by Mr. Justice White, and with him concurred Mr. Justice Gray, Mr. Justice Shiras and Mr, Justice McKenna. By a refined and vigorous reasoning, following the lines laid down by him in Downes v. Bidwell, which will be considered hereafter, he makes evident the conclusion that as long as Porto Rico is in a position where it is subject to the power of Congress to levy an impost tariff duty on merchandise coming from that island into the United States, it must be held to be a foreign country, not internationally, but within the meaning of the tariff laws of the United States. He also took the view that such laws did not apply to Porto Rico without Congressional action; in fact, he said:

I cannot conceive that under the provisions of the Constitution conferring upon Congress the power to raise revenue that consequences such as would flow from immediately putting in force in Porto Rico the revenue laws of the United States could constitutionally be brought about without affording to the Congress the opportunity to adjust the revenue laws of he United States to meet the new situation.

De Lima v. Bidwell. This was an action against the collector of the port of New York to recover duties alleged to have been illegally

exacted and paid under protest, upon certain importations of sugar from San Juan in the Island of Porto Rico, during the autumn of 1899, and subsequent to the cession of the island to the United States.

The question raised in this case was different from the one presented in the second part of the Dooley case, which we have just considered. In that case the duties were exacted at the port of San Juan upon merchandise imported from New York, under customs tariffs proclaimed by order of the President, as commander-in-chief of the military forces of the United States in control of the island. In this case the duties were exacted at the port of New York upon merchandise imported from Porto Rico, under a general tariff act of Congress of July 24, 1897, 79 commonly known as the Dingley Act, the first section of which provides "that on and after the passage of this act, unless otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs, respectively prescribed." The question therefore was not, as in the Dooley case, whether the customs tariffs for Porto Rico of August 19, 1898, and February 1, 1899, prescribed by the President, as commander-in-chief, continued in effect for the imposition of duties upon merchandise imported into Porto Rico from the United States after April 11, 1899, the date of the formal exchange of ratifications of the Treaty of Paris, and the cession of the island to the United States, but rather whether an Act of Congress imposing certain duties upon merchandise imported into the United States from "foreign countries" had application to goods imported from Porto Rico after such formal exchange of ratifications of the treaty and complete acquisition of the island by the United States.

In so far, however, as the decision in both cases is controlled by the same ultimate conclusion as to the status of Porto Rico with respect to the tariff laws of the United States, the distinction is more apparent than real. In the Dooley case, for instance, the primary question was whether the President, as commander-in-chief, had authority to impose any duties at all upon merchandise imported from New York into Porto Rico. Prior to the ratification of the treaty the powers of the

79 30 Stat. 151, ch. 11.

President, as commander-in-chief, were unlimited in the sense that he could exact any impost duty that he saw fit upon any merchandise coming into the island from anywhere, simply because, as already stated, at that time, Porto Rico was a foreign territory in the military possession—not within the sovereignty—of the United States. After the acquisition, however, the military powers of the President in this respect were restricted to the imposition of duties upon merchandise imported into the island from foreign countries only; for, as said by Mr. Justice Brown in that case, "the spirit as well as the letter of the tariff laws admit of duties being levied by a military commander only upon importations from foreign countries." And this, of course, made the decision of the case turn upon the question whether Porto Rico was a "foreign country" within the meaning of the tariff laws of the United States, the same as in the De Lima case, now under consideration.

Said Mr. Justice Brown in this case:

A foreign country was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States. The status of Porto Rico was this: The island had been for some months under military occupation by the United States as a conquered country, when, by the second article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the Island of Porto Rico, which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon these facts, and the question were broadly presented whether a country which has been ceded to us, the cession accepted, possession delivered, and the island occupied and administered without interference by Spain or any other Power, was a foreign country or domestic territory, it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser who had accepted the deed, gone into possession, paid taxes and made improvements without let or hindrance from his vendor. But it is earnestly insisted by the government that it never could have been the intention of Congress to admit Porto Rico into a customs union with the United States, and that, while the island may be to a certain extent domestic territory, it still remains a "foreign country" under the tariff laws, until Congress has embraced it within the general revenue system.

After reviewing a number of cases previously decided by the Supreme Court, involving questions of this character, and certain regulations of the executive departments relating to the only possessions in connection with which the question of the status of newly acquired territory previous to any action by Congress had arisen, and which were supposed to favor the contention of the government, as well as the construction put upon this question by Section 2 of the Foraker Act which makes a distinction between foreign countries and Porto Rico by enacting that the same duties shall be paid upon "all articles imported into Porto Rico from ports other than those of the United States, which are required by law to be collected upon articles imported into the United States from foreign countries," he said:

From this résumé of the decisions of this court, the instructions of the executive departments, and the above Act of Congress, it is evident that, from 1803, the date of Mr. Gallatin's letter, to the present time, there is not a shred of authority, except a dictum in Fleming v. Page (practically overruled in Cross v. Harrison), for holding that a district ceded to and in the possession of the United States remains for any purpose a foreign country. * * * The practice of the executive departments, thus continued for more than half a century, is entitled to great weight, and should not be disregarded nor overturned except for cogent reasons, and unless it be clear that such construction be erroneous. But were this presented as an original question we should be impelled irresistibly to the same conclusion.

Then he proceeded to emphasize the importance and binding force of a treaty as being, constitutionally, placed upon the same footing and made of like obligation, with an act of legislation, and said that one of the ordinary incidents of a treaty is the cession of territory. It is not too much to say it is the rule, rather than the exception, that a treaty of peace, following upon a war, provides for a cession of territory to the victorious party; that the territory thus acquired is acquired as absolutely as if the annexation were made, as in the case of Texas and Hawaii, by an act of Congress.

"It follows from this," he said, "that by the ratification of the Treaty of Paris the island became territory of the United States—although not an organized territory in the technical sense of the word."

That the territory thus acquired is subject to the legislative authority of Congress is made apparent by the court; in fact Mr. Justice Brown said:

It is an authority which arises, not necessarily from the territorial clause of the Constitution, but from the necessities of the case, and

from the inability of the States to act upon the subject. Under this authority Congress may deal with territory acquired by treaty; may administer its government as it does that of the District of Columbia; it may organize a local territorial government; it may admit it as a State upon an equality with other States; it may sell its public lands to individual citizens or may donate them as homesteads to actual settlers. In short, when once acquired by treaty, such territory belongs to the United States, and is subject to the disposition of Congress.

Then he went on to say that territory thus acquired can remain a foreign country under the tariff laws only upon one of two theories; either that the word "foreign" applies to such countries as were foreign at the time the statute was enacted, notwithstanding any subsequent change in their condition, or that they remain foreign under the tariff laws until Congress has formally embraced them within the customs union of the States. The first theory, he said, was obviously untenable, because while a statute is presumed to speak from the time of its enactment, it embraces all such persons or things as subsequently fall within its scope, and ceases to apply to such as thereafter fall without its scope. "So when the Constitution of the United States declares in Article I, sec. 10, that the States shall not do certain things, this declaration operates not only upon the thirteen original States, but upon all who subsequently become such; and when Congress places certain restrictions upon the powers of a territorial legislature, such restriction ceases to operate the moment such territory is admitted as a State." parity of reasoning, he said, a country ceases to be foreign the instant it becomes domestic. "So, too, if Congress saw fit to cede one of its newly acquired territories (even assuming that it had the right to do so) to a foreign Power, there could be no doubt that from the day of such cession and the delivery of possession, such territory would become a foreign country, and be reinstated as such under the tariff laws. Certainly no Act of Congress would be necessary in such case to declare that the laws of the United States had ceased to apply to it." Reverting to the other alternative of his proposition, he said:

The theory that a country remains foreign with respect to the tariff laws until Congress has acted by embracing it within the Customs Union, presupposes that a country may be domestic for one purpose and foreign for another. It may undoubtedly become necessary for the adequate administration of a domestic territory to pass a special

act providing the proper machinery and officers, as the President would have no authority, except under the war power, to administer it himself; but no act is necessary to make it domestic territory if once it has been ceded to the United States. * * * This theory also presupposes that territory may be held indefinitely by the United States; that it may be treated in every particular, except for tariff purposes, as domestic territory; that laws may be enacted and enforced by officers of the United States sent there for that purpose; that insurrections may be suppressed, wars carried on, revenues collected, taxes imposed; in short, that everything may be done which a government can do within its own boundaries, and yet that the territory may still remain a foreign country. That this state of things may be continued for years, for a century even, but that until Congress enacts otherwise, it still remains a foreign country. To hold that this can be done as matter of law we deem to be pure judicial legislation. We find no warrant for it in the Constitution or in the powers conferred upon this court. It is true the nonaction of Congress may occasion a temporary inconvenience; but it does not follow that courts of justice are authorized to remedy it by inverting the ordinary meaning of words.

If an act of Congress be necessary to convert a foreign country into domestic territory, the question at once suggests itself, what is the character of the legislation demanded for this purpose? Will an act appropriating money for its purchase be sufficient? Apparently not. Will an act appropriating the duties collected upon imports to and from such country for the benefit of its government be sufficient? Apparently not. Will acts making appropriations for its postal service, for the establishment of lighthouses, for the maintenance of quarantine stations, for erecting public buildings, have that effect? Will an act establishing a complete local government, but with the reservation of a right to collect duties upon commerce, be adequate for that purpose? None of these, nor all together, will be sufficient, if the contention of he Government be sound, since acts embracing all these provisions have been passed in connection with Porto Rico, and it is insisted that it is still a foreign country within the meaning of the tariff laws. We are unable to acquiesce in this assumption that a territory may be at the same time both foreign and domestic.

In conclusion, the court was of opinion that at the time these duties were levied Porto Rico was not a foreign country within the meaning of the tariff laws, but a territory of the United States, that the duties were illegally exacted and that the plaintiffs were entitled to recover them.

Mr. Chief Justice Fuller, Mr. Justice Harlan, Mr. Justice Brewer and Mr. Justice Peckham concurred in this opinion without adding a single remark to it.

Mr. Justice McKenna, with whom concurred Mr. Justice Shiras and Mr. Justice White, delivered a dissenting opinion, in which, to begin with, he refutes the contention that in order to settle the controversy in this litigation it was enough to settle whether Porto Rico was foreign country or domestic territory, "to use the antithesis of the opinion of the court," and, outlining the same reasoning for the doctrines in the Downes case, he asks whether these expressions "foreign" or "domestic" are to be taken abstractly and unqualifiedly—to the full extent that those words implied—or limitedly, in the sense that the word "foreign" is used in the customs laws of the United States. "If abstractly," he says, "the case turns upon a definition, and the issue becomes single and simple. If at the time the duties, which are complained of, were levied, Porto Rico was as much a foreign country as it was before the war with Spain, if it was as much domestic territory as New York now is, there would be no serious controversy in the case. If the former, the terms and the intention of the Dingley Act would apply. If the latter, whatever its words or intentions, it could not be applied. Between these extremes there are other relations, and that Porto Rico occupies one of them and its products hence were subject to duties under the Dingley Tariff Act can be demonstrated."

Then he proceeds to discuss the statements of the court and refers at great length to the cases of Fleming v. Page, United States v. Rice, and Cross v. Harrison, examined by the court, and reaches the conclusion that Porto Rico did not become territory of the United States by the mere effect of the treaty and its ratification, and that congressional action was necessary before it could become incorporated as a part of the territory of the United States and thereby cease to be foreign so far as the revenue laws of the United States were concerned.

Mr. Justice Gray wrote a separate dissenting opinion in which he merely said that he was compelled to dissent from the judgment in this case, because it appeared to him irreconcilable with the unanimous opinion of the court in Fleming v. Page and with the opinion of the majority of the justices in the case, the same day decided, of Downes v. Bidwell.

Pedro Capó-Rodríguez.

(To be continued in the next number.)

THE SANCTION OF INTERNATIONAL LAW

In a recent editorial of one of the legal periodicals, the author quotes Alexander Hamilton's statement in the Federalist, that "it is essential to the idea of law that it be attended with a sanction, or in other words, a penalty or punishment for disobedience," and from this premise draws the following conclusion: "The law of nations, so-called, is a mere empty term or phrase, a high resounding name for something in and of itself vain and impotent."

To most authorities and students of international law, the author's conclusion is somewhat astounding, but the fact that the statement could be made by a prominent legal editor, illustrates the extent of the present popular distrust of the science.

From the substantive point of view, international law has reached an advanced stage of development. The methods of enforcing it are yet imperfect, but it is certainly not now wholly without "sanction." In his Digest of International Law, John Bassett Moore enumerates the following "modes of redress" for infringements of international rights:

(1) Negotiation; (2) good offices and mediation; (3) arbitration; (4) withdrawal of diplomatic relations; (5) retortion or retaliation; (6) display of force; (7) use of force; (8) reprisals; (9) pacific blockade; (10) embargo; (11) nonintercourse.

Intranational or municipal law relies ultimately for its enforcement on two instruments: (1) the power of public officers to whom the duty of enforcing the law has been delegated by common consent, and (2) the instrument of "self-help."

The present methods of enforcing international rights partake almost wholly of the nature of "self-help." In so far, however, as a nation employing them correctly interprets its rights, it is enforcing international law and gives to it "sanction."

Even with such remedies, inadequate though they are, the law is enforced in by far the large majority of cases. As in the administration of law within nations, the spectacular examples of miscarriage of justice, the armed revolts against the law are the exceptions. The records of the foreign office of any great nation, the many historical instances where recalcitrant nations have been forced to obey the law by the employment of some one of these "modes of redress," are evidence that the enforcement of the law is the rule.

"LEGAL" AND "ILLEGAL" WAR

War is recognized in international law at present as, under some circumstances at least, a legal method of enforcing rights. It is not countenanced as legal when prosecuted for plunder or oppression, or except as an ultimate remedy; nor is there in international law any recognition of the theory that it is beneficial as a sort of national virulent exercise, or that it is the necessary permanent fruit of irreconcilable racial differences. The theory of "legal war" was probably correctly stated in the Instructions for the Government of the Armies of the United States in the Field, issued in 1863, as follows: ²

Modern times are distinguished from earlier ages by the existence at one and the same time of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace. * *

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong.

Some writers in international law, including Vattel ⁸ and Bynkershoek, ⁴ have defined war generally as the method by which nations prosecute their "rights." Grotius was more discriminating and said: ⁵ "We do not say that war is a state of *just* contention, because precisely the point to be examined is, whether there be just war, and what war is just." Obviously, war prosecuted by a nation which incorrectly interprets the law and its rights thereunder, operates not to enforce but to defeat the law.

² General Orders No. 100, War of the Rebellion, Official Records, Series III, 151.

³ Book 3, Ch. 1, Par. 1.

⁴ Book 1, Ch. 1.

Ibid., Par. 2.

It is difficult to reconcile with the principle that aggressive war is sometimes "legal" under international law the prevalent theory of the unlimited right of self-defense by nations. Most authorities state unqualifiedly that a nation attacked with force has not only the right but the duty to repel the attack, wholly regardless of its cause. Halleck says: ⁶

Self-preservation * * * is one of the most essential and important rights incident to State sovereignty. * * * It is not only a right with respect to other states, but a duty with respect to its own members and one of the most solemn and important duties which it owes to them.

Even Sir Edward Fry, a Quaker, and former Law Justice of Great Britain, said at The Hague in 1907:

* * * My government recognizes that it belongs to the duty of every country to protect itself against its enemies and against the dangers by which it may be threatened, and that every government has the right and the duty to decide what its own country ought to do for this purpose.

If the right of a nation to defend itself is unlimited, and if there is also the right to prosecute aggressive war in the enforcement of rights, the curious anomaly, repulsive to standards of legal consistency, results that two warring nations may both be acting quite within their international legal rights and the enforcement of either right is inconsistent with the other.

In the evolution of law among individuals there was once a time when "self-help" was used extensively as a means by which rights were enforced. Pollock and Maitland, speaking of mediæval English law, say: ⁷

For a long time, law was very weak, and as a matter of fact, it could not prevent "self-help" of the most violent kind. Nevertheless, at a fairly early stage in its history it begins to prohibit in uncompromising terms any and every attempt to substitute force for judgment. * * * So fierce is it against "self-help" that it can hardly be induced to find a place even for self-defense.

Halleck, International Law, Vol. I, p. 120.

Pollock and Maitland, History of the English Law, Vol. II, p. 574.

As the law has developed, the duty of enforcing it and the right to employ force for this purpose have been under most circumstances taken from individuals and delegated to public officials who act after rights have been judicially determined. "Self-help" has, however, been retained as a supplementary means of enforcing the law in certain instances, notably in the right to abate nuisances and to restrict certain trespasses, and to defend against assaults. The New York Penal Law provides 8 that the use of "force or violence upon or towards the person of another is not unlawful" in six enumerated classes of cases. Self-defense is specifically authorized, but at the same time, the right is strictly limited in the following language: 9

An act, otherwise criminal, is justifiable when it is done to protect the person committing it, or another whom he is bound to protect, from inevitable and irreparable personal injury, and the injury could only be prevented by the act, nothing more being done than is necessary to prevent the injury.

An individual does not have the legal right to employ "self-help," except as so authorized, and has no right to defend himself against the acts of either individuals or police officers legally engaged in enforcing the law.

Drawing conclusions from analogies is always dangerous, but if the evolution of international law is to follow at all the evolution of intranational law, it seems probable that the future will realize neither the theory that the right of individual nations to use force will be entirely abolished, nor the theory that the right to employ it will continue without limit; but that the responsibility of enforcing international law will at some time be delegated to specially authorized officials, and national "self-help" will be permitted, so far and only so far as it assists in establishing justice and order.

INTERNATIONAL "CIVIL" AND INTERNATIONAL "CRIMINAL" LAW

Intranational law is divided into two classes, civil law and criminal law. Civil law deals with acts and rights affecting primarily individuals only and not the community as a whole. Criminal law deals with acts

⁸ Section 246.

⁹ Section 42.

which, though usually infringing the rights of specific individuals, are also conceived as affecting the public welfare and the order of the entire state.

International law has not drawn a similar distinction in dealing with the acts of nations. A recognition that there are certain controversies which are essentially of a civil nature has been evident in many recent conferences and conventions. The Russian project at The Hague in 1907 for "compulsory arbitration" enumerated a long list of such controversies, including "conflicts regarding pecuniary damages suffered by a state or its citizens in consequence of illegal or negligent action on the part of any state or the citizens of the latter," disagreements regarding interpretations of treaties concerning postal and telegraphic service and railways, patents, trade-marks, weights and measures, inheritances, and similar subjects.

It seems also obvious that certain international treaties partake wholly of the nature of private contracts, and that others signed by many nations may partake of the nature of international legislation, and are of such a character that their breach may involve moral turpitude and may so affect the entire community as to partake of the nature of a crime against the community. Mr. Roosevelt applies this theory with characteristic emphasis in his interpretation of Germany's admitted violation of the treaty guaranteeing Belgium's neutrality, ¹⁰ in the following language:

When Germany thus broke her promise, we broke our promise by failing at once to call her to account. The treaty was a joint and several guarantee and it was the duty of every signer to take action when it was violated. * * * All (Germany's acts) separately and collectively were criminal actions against international right, against civilization, against justice and humanity throughout the world. * * * Even if not called upon to act by the Hague Convention, she (the United States) has the right and the duty as soon as any such gross violations of international law occur. This is the only way to establish proper precedents in international law and to save it from becoming a farce.

In so far as this purports to state the *legal obligation* of the United States, it is not in accordance with hitherto accepted principles of international law. Andrew Jackson took a similar position regarding certain

¹⁰ Metropolitan Magazine, Oct., 1915.

acts of France in 1835 and was answered by Mr. Gallatin in a letter to Mr. Everett as follows: 11

The general position assumed by the President, and apparently sustained by Judge Wayne and others, is, that whenever a nation has a claim clearly founded in justice, as that in question undoubtedly is, and justice is denied, resort must ultimately be had to war for redress of the injury sustained. This, as an abstract proposition, is wholly untenable, supported neither by the practice of nations nor by common sense. The denial of justice gives to the offending nation the right of resorting to arms, and such a war is just so far as relates to the offending party. But to assert that a nation must in such a case, without attending either to the magnitude or nature of the injury, and without regard either to its own immediate interest or to political considerations of a higher order affecting perhaps its foreign and domestic concerns, inflict upon itself the calamities of war, under the penalty of incurring disgrace, is a doctrine which, if generally adopted, would keep the world in perpetual warfare, and sink the civilized nations of Christendom to a level with the savage tribes of our forests.

Whether Mr. Roosevelt's interpretation of the morality of Germany's conduct or of our duty is correct or not, it is certainly conceivable that a nation might so act as to violate the rights and jeopardize the safety of the whole community of nations, and that its act might call for concerted action by the community. Nevertheless, for perhaps wise reasons, international law has refrained from characterizing such conduct, however reprehensible, as an "international crime." The law is stated by Oppenheim in his work on international law, ¹² as follows:

International delinquency is every injury to another state committed by the head of the government of a state through neglect of an international duty. * * *

An international delinquency is not a crime, because the delinquent state as a sovereign cannot be punished, although compulsion may be exercised to procure a reparation of the wrong done.

The nature of the law of nations, as a law between, not above sovereign states, excludes the possibility of punishing a state for an international delinquency and of considering the latter in the light of a crime.

Whether a nation which so acts as to disturb the rights and good order of the entire world be termed legally a "delinquent," or a "criminal," is

^{11 2} Gallatin's Writings, 494.

¹² Vol. I, 2nd Ed., p. 209, et seq.

perhaps a matter of terminology. Whatever the term, the conception is growing that a nation's acts which, as a matter of fact, have this effect, should in some way be subject to the world's control.

The theory is not new. Daniel Webster in 1842, as Secretary of State, wrote to the American Minister at Mexico as follows:

Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states. * * *

No community can be allowed to enjoy the benefit of national character in modern times without submitting to all the duties which that character imposes.

Mr. Evarts, as Secretary of State, in 1877, said:

If a government "confesses itself unable or unwilling to conform to those international obligations which must exist between established governments of friendly states, it would thereby confess that it is not entitled to be regarded or recognized as a sovereign and independent Power."—Ms. Instr. Mexico, XIX 357.

An interesting attempt to harmonize the theory of inviolable national sovereignty and the conception of the existence of certain rights of the "international community" is found in Internoscia's Code of International Law, published in 1910. He defines the "international community" as follows: ¹³

The International Community is the voluntary union of the States that aim at the attainment by their common endeavors of the full development of their powers and of the satisfaction of their needs, in order to assure the good of all men.

In his introduction he explains his theory of world organization as follows: 14

The community of states to be organized for the juridical protection of international law must be a supreme power destined to respect and to command the respect of the independence of the people. * * *

¹³ Part 1, Book 1, Tit. 1, par. 13.

¹⁴ P. xv, xxvii.

When a state, contrary to the rules of international law, conquers or abuses another state, the former state although sovereign becomes liable to be brought before the authority that represents the strength of the rest of the world, and if it refuses to recognize such authority, while left free to combat the whole world, it must incur the penalty of its folly even to the point of destruction, if need be, in order that the disturbance it has caused may be removed. The peace and tranquillity, the good and the welfare of the whole of humanity must be secured even at the cost of annihilating a rebellious part of it. * * *

This code * * * is not opposed to the well-established belief of the freedom of a state. This code recognizes the freedom of a state to act as it pleases so far that it grants the rights of a belligerent to a state when it contests the execution of the judgment rendered against it.

In the development of the law of crimes in intranational law, the process was gradual by which certain acts originally viewed solely as torts affecting only single individuals were brought within the conception of being crimes against the entire state. The whole law of crimes has been evolved from the ancient law of torts. In this development the individual has been required to surrender many of what were previously considered his rights, in the interest of the rights of others and the good order of the community.

In international law, so strong is the theory that the dignity of national sovereignty should be upheld, and that the law of nations is a law "between not above sovereign states," that it is doubtful that the now termed "delinquencies" of nations will soon, if ever, be stigmatized with the term "international crimes." In our own national organization, though we have formed a strong federal government, the theory that the States are sovereign political units has always excluded the conception that a State is legally capable of committing a crime. Nevertheless, it seems probable from present indications and the natural necessities of the situation, that international law will ultimately provide for some method of central control over acts of nations of a quasi-criminal nature, and that individual nations will find it to their mutual interest to surrender some of what are at present deemed their sovereign rights, in the interest of the welfare and order of the community of nations.

International law does therefore at the present time have "sanction." That sanction rests almost wholly on the ultimate force of "self-help."

The tendency will be to delegate the duties both of enforcing civil rights and of controlling quasi-criminal acts to authorized officials and to preserve "self-help" so far and only so far as it proves an orderly auxiliary.

In the law's evolution, the conception of the collective rights of the community of nations will enlarge. National acts and rights will fall naturally into two classes, one comprising those of a civil and the other those of a quasi-criminal nature.

Finally, international law must and will ultimately be looked upon as a law and a force not merely between, but also above even sovereign nations.

Amos J. Peaslee.

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EDITORIAL COMMENT

THE AMERICAN PUNITIVE EXPEDITION INTO MEXICO

On March 9, 1916, the territory of the United States was invaded by a force of some 1,500 men, under the command of Francisco Villa, who has disputed for the past year and more the authority of General Carranza, the First Chief of Mexico, whose government was recognized by the United States on October 19, 1915, as the *de facto* government of Mexico. The city of Columbus in New Mexico was the scene of the attack and a number of Americans were killed, including some soldiers, and many buildings were set fire to and burned before the intruders were driven across the international border into Mexico.

The day following the attack President Wilson decided that the circumstances required immediate action to be taken against Villa, and

on the 10th of March the following statement was given out at the White House:

An adequate force will be sent at once in pursuit of Villa with the single object of capturing him and putting a stop to his forays. This can and will be done in entirely friendly aid of the constitutional authorities of Mexico and with scrupulous respect for the sovereignty of that Republic.

There can be no doubt that steps should immediately have been taken to secure a reparation for the violation of American sovereignty, that the perpetrators of the outrage—for outrage it was—should be punished, and that measures should be taken by Mexico to prevent a recurrence of the incident. Under ordinary circumstances the facts would have been laid before the Mexican Government, with a request that it be disavowed, that reparation be made, and that the perpetrators be apprehended and punished, and it would seem that the sending of American troops across the frontier into Mexico in pursuit of Villa and his band would constitute a violation of Mexican sovereignty, just as Villa's invasion of American soil had constituted a violation of American sovereignty.

But the situation in Mexico, and particularly in the north of Mexico, is extraordinary, not ordinary, and though the United States has recognized General Carranza's government as the de facto government of Mexico, the General is not in the saddle in all parts of his distracted country. However, having recognized General Carranza's government, it would seem that the United States is estopped from taking action which would deny in fact what the United States had recognized in theory, and that American troops should not cross the boundary except with the knowledge and permission of the government which the United States had recognized. It would seem that General Carranza should have been called upon as the de facto government of Mexico to disavow the outrage and to undo the wrong as best it might be done. Upon his unwillingness or inability to do so the United States would then be in a position to decide for itself whether it should enter Mexico to capture Villa and his band, if in the opinion of the American authorities such action should seem to be requisite. With the presence of Villa's troops in the north of Mexico and with the possibility of a renewed invasion of American territory, the American authorities might, it is believed, properly consider his presence as a nuisance and, taking the law in their own hands, proceed to abate the nuisance either without the cooperation or consent of the de facto authorities.

As examples of abating a nuisance in adjoining jurisdiction, the action of Great Britain in the case of the steamboat *Caroline* (2 Moore's Int. Law Dig., 409–414) may be cited, in which a party from Canada, during the insurrection of 1837, under the leadership of one McLeod, entered American jurisdiction and seized and destroyed the *Caroline*, a small steamer engaged in carrying arms and ammunition to the rebels.

The case of Amelia Island (1 Wharton's Int. Law Dig., 2d ed., pp. 222-4), is one in which the United States took possession of Amelia Island, then in possession of Spain, at the mouth of St. Mary's River, "the nuisance being one which required immediate action."

Mexico and the United States have had a long and trying experience with incursions of Indians near the international boundary into one or the other country. The views of the United States and the incidents in which those views were applied are to be found in 1 Wharton's Digest, 2d ed., pp. 229–234, and Moore's Digest, Vol. II, pp. 418–425, and were stated by a very distinguished Secretary of State, Mr. Marcy, in terms applicable to both countries. In regard to the right of the United States to enter Mexico, he said in a note dated February 4, 1856, to Mr. Almonte: "If Mexican Indians whom Mexico is bound to restrain are permitted to cross its border and commit depredations in the United States, they may be chased across the border and then punished." (Wharton's Digest, Vol. I, p. 230.)

In regard to the right of Mexico to enter American territory under like circumstances, Secretary Marcy said in the same note:

If Indians whom the United States are bound to restrain shall, under the same circumstances, make a hostile incursion into Mexico, this Government will not complain if the Mexican forces who may be sent to repel them shall cross to this side of the line for that purpose, provided that in so doing they abstain from injuring the persons and property of citizens of the United States. (II Moore's Dig., p. 421.)

Admitting that the right exists in international law for a country to abate a nuisance in an adjoining country, and admitting the right, as stated by Secretary Marcy, to enter foreign territory in order to pursue and to punish marauders of that country who have committed depredations within the territory of the invaded state and have sought refuge in their own country, it is believed to be bad policy to exercise this right and to take the law into one's own hands. The proper method is for the countries threatened by the acts of marauders to come to an agreement by which raids of the kind specified shall be prevented and, if it be necessary for one country to enter the territory of another in

pursuit of marauders and there to punish them, that this permission shall be expressly given and the methods of its exercise determined in order that disputes and bitterness of feeling may not arise between the contracting countries. This is what Mexico and the United States have done in a series of agreements beginning in the year 1882, and to be found in Malloy's Treaties, Conventions, etc., 1776–1909, Vol. I, pp. 1144, 1145, 1157, 1158, 1162, 1170, 1171, 1177. These treaties or protocols relate only to Indians, but they consecrate the principle, and a bandit is a bandit, whether he be an Indian or not.

It is to be hoped and it is to be presumed that the United States and Mexico either have or will come to an agreement regarding the pursuit of Villa which, granting the right, will prescribe its method of exercise in such a way as to allay unjust fears that a punitive expedition can have any ulterior motives inconsistent with the sovereignty and dignity of Mexico.

JAMES BROWN SCOTT.

INSTRUCTIONS TO FRENCH NAVAL OFFICERS

On December 19, 1912, the French Government issued to its naval forces instructions in regard to the operation of international law in case of war. The one hundred and sixty-six articles of these instructions set forth clearly the general rights and duties which the naval officer should consider in taking action. In these instructions were embodied many of the principles stated in the Declaration of London of 1909. As these instructions were drawn up in time of peace it might be supposed that here would be found the body of international law binding, according to the French opinion, upon naval commanders and the law according to which hostilities would be conducted by others.

So far as the same subjects were treated in the manual relating to the laws of maritime war in relations between belligerents adopted by the Institute of International Law at its Oxford meeting in 1913, there were few differences. It seemed then, therefore, that the maritime law of war was becoming fairly clearly recognized. Of course there are matters which have arisen since July, 1914, for which no provision was made as there were at that time no precedents or grounds for action.

It is serviceable, therefore, to estimate as far as may be while rules are still under great strain how far rules prepared dispassionately and in time of peace have withstood the test of war. This is made possible

by the issue early in the year 1916 by the French Government of a decree promulgating instructions to naval officers in regard to the operation of international law in war.

A comparison of the French instructions of 1912, drawn up in time of peace, and those of 1916, drawn up in time of war, shows elaboration and definition of several articles of the instructions of 1912. This is not in the nature of change in principle or practice. In general, also, it may be said that there is no tendency toward greater exemption of enemy private property at sea from capture. The list of contraband both absolute and conditional has been greatly enlarged, now even including soap, and ultimate destination of the goods is made the criterion regardless of intervening transportation. In consignments of goods to order, consignments to enemy or occupied territory, and when consignee is not stated, the burden of proof of innocence is placed upon the owners. Neutral vessels whose papers show neutral destination are liable to capture till the end of the voyage if, in spite of the papers, they make an enemy port. It is made clear that the use of radio apparatus may be regarded as unneutral service.

Even granting these modifications, the one hundred and sixty-six articles of the instructions of 1916 are so nearly identical with the like instructions of 1912 as to show that, except in case of the wide extension of the list of contraband, there has been little change other than of an explanatory nature. Such a fact, which is likewise evident in the rules of some other countries, is testimony to the sound basis of maritime international law and significantly hopeful for its future development.

George Graffon Wilson.

THE RIGHT OF NEUTRALS TO PROTEST AGAINST VIOLATIONS OF INTERNATIONAL LAW .

It is frequently stated that a neutral nation does not have the right to protest or to make a representation to a belligerent if an act of the latter in violation of neutral rights only affects another neutral of the society of nations and does not affect the persons or property of the neutral whose right to protest or to make a representation is questioned. It is true that a neutral may not have the duty to protest or to make representations unless the life or property of its citizens be affected by the unlawful act of the belligerent, but it is believed that the right so to protest exists.

Confusion seems to arise because of the difference in the nature and application of municipal law, on the one hand, and international law on the other, and the failure to appreciate that what might be forbidden under one system may be required under another. Municipal law is determined by a particular country; it may be wise or unwise, it may be good or bad, but it is the affair of the particular country whose law it is.

The case is wholly different with international law, which is a thing of usage and custom and convention of the nations which, taken together, form the loose union, but nevertheless the union, which we call the society of nations. As Chief Justice Marshall said in 1825, in deciding the case of the *Antelope* (10 Wheaton, 66, 122):

No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality that no one can rightfully impose a rule on another. Each legislates for itself and its legislation can operate on itself alone. * * As no nation can prescribe a rule for others, none can make a law of nations.

It follows necessarily, therefore, that it is not the usage or custom of one nation or practice or law of any one nation that can make a law of nations, and if international law, as is the fact, is in large measure usage, custom and practice extending over a long period of time, and such usage and practice is not and cannot be the usage, custom and practice of any one nation, it follows that each nation must either cooperate in the process or must accept the results of the process in order that the law of nations thus formed shall bind it. Lest the practice of a nation, claimed by that nation to be in accordance with international law, may seem to be accepted by silence of the nations and thus become international law, it behooves a nation objecting to that practice to state its objection and to make it clear that it will not be bound by it.

In the case of municipal law a protest might not be justified by the mere presence of a law upon the statute book, because it may not appear that, however formal in terms, it would be applied in such a way as to violate the rights of other nations under international law. It would no doubt be proper to suggest the possibility and to point out the conflict between the municipal statute and international law, but until the statute had been applied in such a way as to violate the rights of foreign countries under international law it could not definitely be said that it would be so interpreted and applied.

In international law, on the other hand, the mere claim to exercise

a right denied by or inconsistent with international law lays, it is believed, the right to protest, and the right to protest is not postponed until the neutral has been injured. The very moment that the act of a belligerent violates the neutral right of any nation, it becomes, it is believed, the right of every neutral nation to protest, even although it may not be considered its duty to protest—although the undersigned believes that it is the duty of the neutral to protest in such a case—because the violation of the right of any neutral nation is the violation of a right common to every neutral, and a claim to violate the right of one is in effect a claim to violate the right of any or all if the belligerent shall believe it to be to its advantage so to do. The material injury is, it is believed, the violation of the principle of law, not merely the injury to the life or property of the citizen of the neutral nation, because life and property depend upon the principle of law, and when this is withdrawn the guarantee of life and property falls with it.

The classic example of the protest of neutral nations whose rights were menaced, although the persons and property of their subjects were not injured, is the protest of France, Austria and Prussia in the case of the *Trent*. This well known case arose during the American Civil War. The *Trent*, a British and therefore neutral, vessel, was proceeding from Havana, Cuba, a neutral port, to London, England, a neutral port, and had on board Messrs. Mason and Slidell, Commissioners of the Confederacy to European countries. On November 8, 1861, the *Trent* was stopped by the American Man of War San Jacinto, under the command of Captain Wilkes, and Messrs. Mason and Slidell were taken off the steamer, which was allowed to proceed to its neutral destination. President Lincoln admitted that Captain Wilkes did not have the right to remove the Confederate Commissioners from the *Trent*, and returned Messrs. Mason and Slidell to British custody.

The case was, superficially at least, between the United States and Great Britain, but the admission by neutrals of the right of the United States to violate international law in the case of Great Britain was an admission that the United States could violate international law as regards other members of the society of nations. This admission Prussia, Austria and France were unwilling to make, and each of the three powers protested to the Government of the United States. The text of these protests is printed in full in the Supplement to this Journal, pp. 67–72.

James Brown Scott.

THE TREATY WITH NICARAGUA GRANTING CANAL AND OTHER RIGHTS TO THE UNITED STATES

After three attempts within the last five years of the Government of Nicaragua to conclude a convention with the United States under the terms of which funds might be secured for rehabilitating the depleted financial and economic resources of the country, due principally to the civil wars and administrative abuses of the Zelava régime, it now seems probable that Nicaragua's desire is about to be accomplished. February 18th last the United States Senate advised and consented to the ratification, with certain amendments which will be referred to later, of the convention signed on August 5, 1914, by Secretary of State Bryan of the United States and Emiliano Chamorro, the Minister of Nicaragua, granting to the United States in return for a money payment the right-of-way for the construction of an interoceanic canal through Nicaragua, the lease of certain islands in the Carribbean Sea. and the grant of a naval base on the Gulf of Fonseca. Information received from Managua indicates that the Nicaraguan Congress has ratified the convention, including the United States Senate amendments, so that all that remains to be done are the exchange of ratifications and the appropriation by the Congress of the United States of the sum of money provided in the convention to be paid to Nicaragua.

The first attempt of Nicaragua to secure relief for her financial distress was made when Mr. P. C. Knox was Secretary of State of the United States. On June 6, 1911, he signed a convention with Nicaragua which contemplated a loan from American bankers, to be secured on the customs of Nicaragua, which were to be collected and applied to the purposes of the loan by a collector selected by the fiscal agent of the loan and approved by the President of the United States. The convention followed in its general objects the Dominican Receivership Convention, although differing from it somewhat in details. The convention failed of ratification in the Senate and the subject was dropped by Secretary Knox.

In the summer of 1913 a second attempt was made while Mr. W. J. Bryan was Secretary of State, who laid before the United States Senate a convention which entirely eliminated the loan features of the Knox con-

¹ The text of the convention of 1911 is printed in the Supplement to the Journal for that year, Vol. V, p. 291. An editorial comparing that convention with the Dominican Receivership Convention appeared in the October, 1911, Journal, p. 1044.

vention and provided for a direct money payment from the Government of the United States to the Government of Nicaragua in return for an option upon the Nicaraguan canal route, the lease of two small islands in the Caribbean Sea, and the grant of a naval base on the Pacific coast. It was generally reported and accepted at the time that the convention also included provisions similar to what is known as the Platt Amendment to the Cuban Constitution, which were subsequently embodied into a convention between the United States and Cuba concluded on May 22, 1903.² The provisions of the Platt Amendment which might be applied to Nicaragua are to the effect that Cuba may not enter into any treaty with a foreign Power which will impair its independence or permit such Power to obtain control over any portion of the island. that it will not contract any public debt for the discharge of which the ordinary revenues of the island will be inadequate, and that the United States shall have the right to intervene to preserve Cuban independence and an adequate government.

When the provisions of the proposed treaty of 1913 with Nicaragua became known, they aroused considerable opposition in the other republics of Central America, and Costa Rica, Salvador and Honduras filed protests against the ratification of the treaty with the State Department and the United States Senate. The specific objections of these governments will be referred to later. The general objections were to the effect that the treaty would convert Nicaragua to all intents and purposes into a protectorate of the United States, and that such a relationship would make forever impossible the long-cherished union of the Central American republics under one government.³ The opposition of Central America found an echo in the United States and action toward the ratification of the treaty was postponed.

The subject was again revived in 1914 by the signature of the present treaty, from which all stipulations which may be considered as embodying the provisions of the Platt Amendment have been omitted. The treaty as now drawn is short and simple, granting to the United States in return for the payment of \$3,000,000 the exclusive right to construct and operate an interoceanic canal through Nicaragua, the lease of Great and Little Corn Islands in the Caribbean Sea and the right to establish a naval base on the Gulf of Fonseca.

² Malloy, Treaties, Conventions, etc., Vol. I, p. 362.

³ Regarding attempts to form such a union, see editorial in this JOURNAL for October, 1913, p. 829.

It is obviously not the intention of the Government of the United States to undertake the construction of another interoceanic canal so shortly after the completion of the canal at Panama and before the problem of keeping that canal open has been finally solved. The treaty with Nicaragua seems merely to be intended to give the United States an option upon possible canal routes through Nicaragua, so as to prevent any other Power from building a competing interoceanic waterway through the only other route apparently available for that purpose.

The preamble of the treaty recites the desire of the contracting governments "to provide for the possible future construction of an interoceanic canal by way of the San Juan River and the Great Lake of
Nicaragua, or by any route over Nicaraguan territory, whenever the
construction of such canal shall be deemed by the Government of the
United States conducive to the interests of both countries."

Article 1 of the convention contains a grant in perpetuity from Nicaragua to the United States of the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of such canal. The details of the terms upon which the canal shall be constructed, operated and maintained are left to be agreed upon in the future "whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal."

The preamble further recites the wish of Nicaragua to facilitate in every way possible the successful maintenance and operation of the Panama Canal, and to enable the United States to protect the Panama Canal and the proprietary rights granted in Article 1 of the present treaty, the Government of Nicaragua in Article 2 leases to the United States for the term of 99 years the two small islands in the Caribbean Sea known as Great Corn and Little Corn Islands. These islands are about 100 miles northeast of the mouth of the San Juan River, which would presumably be used as a part of the proposed canal, and about 300 miles northwest of Colon, the Atlantic terminus of the Panama Canal.

In further pursuance of the wish of Nicaragua to enable the United States to protect the Panama Canal and the rights granted in the present treaty, Nicaragua also grants to the United States in Article 2 the right to establish, operate and maintain for the same period a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the Government of the United States may select. The Gulf of

Fonseca is an arm of the Pacific Ocean into which projects the extreme northwest corner of Nicaragua. Across the Gulf to the northwest lies Salvador and between Salvador and Nicaragua the shores of Honduras form the northeastern border of the Gulf. The Gulf of Fonseca is several hundred miles away from the western terminus of any canal which may be constructed by way of Lake Nicaragua and is about 600 miles west and about 300 miles north of Panama. Nevertheless, a naval base located there would seem to be of strategical importance, as it will afford an American base much nearer than any at present on the Pacific coast, from which to launch a flank attack upon any unfriendly naval demonstration directed against the Panama Canal from the Pacific side.

The foregoing leases and grants are subject to renewal at the option of the United States for a further period of 99 years, and the territory leased and the naval base granted shall be subject exclusively to the laws and sovereign authority of the United States during the terms of the lease and grant.

For these concessions, the United States agrees in Article 3 to pay to Nicaragua, upon the date of the exchange of ratifications of the convention, the sum of \$3,000,000, United States gold. This money is to be deposited to the order of the Government of Nicaragua in such bank or banks as the Government of the United States may determine. and is to be applied by Nicaragua upon its indebtedness or, according to an amendment inserted by the United States Senate, to "other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties." The Senate amendment further provides that all disbursements from this fund shall be made by orders drawn by the Minister of Finance of Nicaragua and approved by the Secretary of State of the United States, or by such person as he may designate. Another amendment inserted by the United States Senate adds to the grant of the canal route in Article 1 the provision that it shall be "forever free from all taxation or public charge."

While the elimination of the Platt Amendment provisions from the Nicaraguan treaty seems at least to have taken the edge from the assertion that the United States proposes to establish a protectorate in Central America, the stipulations retained in the treaty are still unsatisfactory to certain of the Central American governments.

Costa Rica claims that it is impossible to build an interoceanic canal in Nicaragua without affecting Costa Rican lands and waters and denies that Nicaragua has the power without consulting Costa Rica to conclude a convention granting the right to construct such a canal. In support of this contention, Costa Rica cites the award of President Cleveland rendered on May 22, 1888, as arbitrator in the boundary dispute between Costa Rica and Nicaragua involving the validity and interpretation of the treaty of limits of April 15, 1858, and especially their respective rights in the San Juan River. 4 By this award, it was held that Nicaragua "remains bound not to make any grants for canal purposes across her territory without first asking the opinion of the Republic of Costa Rica, as provided in Article 8 of the treaty of limits of the 15th day of April, 1858." Article 8 referred to binds Nicaragua not to enter into any contracts of canalization or transit "without first hearing the opinion of the Government of Costa Rica as to the disadvantages which the transaction might occasion the two countries, and, if the transaction does not injure the natural rights of Costa Rica 5 the vote asked for shall only be advisory." President Cleveland's award expressly holds, however, that the treaty of limits of 1858 "does not give to the Republic of Costa Rica the right to be a party to any grants which Nicaragua may make for interoceanic canals." The award further holds that

in cases where the construction of the canal will involve an injury to the natural rights of Costa Rica, her opinion or advice, as mentioned in Article 8 of the treaty, should be more than "advisory" or "consultative." It would seem in such cases that her consent is necessary, and that she may thereupon demand compensation for the concessions she is asked to make; but she is not entitled as a right to share

⁴ For the text of the award and information regarding the arbitration, see Moore's International Arbitrations, Vol. II, pp. 1945–68.

⁵ These natural rights were defined in President Cleveland's award as follows: "The natural rights of the Republic of Costa Rica alluded to in the said stipulation are the rights which, in view of the boundaries fixed by the said Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her; the rights which she possesses in the harbors of San Juan del Norte and Salinas Bay; and the rights which she possesses in so much of the River San Juan as lies more than three English miles below Castillo Viejo, measuring from the exterior fortifications of the said castle as the same existed in the year 1858; and perhaps other rights not here particularly specified. These rights are to be deemed injured in any case where the territory belonging to the Republic of Costa Rica is occupied or flooded; where there is an encroachment upon either of the said harbors injurious to Costa Rica; or where there is such an obstruction or deviation of the River San Juan as to destroy or seriously impair the navigation of the said River or any of its branches at any point where Costa Rica is entitled to navigate the same."

in the profits that the Republic of Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her turn, may concede.

The objections of Salvador, in which presumably Honduras joins, arise from the geographical position of those two countries, sharing as they do with Nicaragua the shores of the Gulf of Fonseca, upon which Nicaragua grants to the United States the right to establish a naval base. This grant, it is alleged, violates the general treaty of peace and amity concluded on December 20, 1907, at the Central American Peace Conference held in Washington through the good offices and upon the invitation of the United States and Mexico.⁶ It is averred that the possession of a part of the territory of Nicaragua by the United States for military purposes will enable it to dominate the entire country and thus impair the constitutional order of Nicaragua in derogation of Article 2 of the convention at Washington, which declares that "every disposition or measure which may tend to alter the constitutional organization in any of them [the five Central American republics] is to be deemed a menace to the peace of the said Republics."

The sovereignty and constitutional order of Nicaragua is further alleged to be impaired by the control retained by the Government of the United States over the expenditure of the \$3,000,000 granted to Nicaragua in return for her concessions. It is interesting to recall in this connection that on January 10, 1911, three years after the convention of Washington, and five months before the original loan convention was negotiated with Nicaragua, Honduras signed with Secretary Knox a convention identical in terms with the Nicaraguan loan convention, providing for a loan to be secured upon its customs, which could not be altered without agreement with the Government of the United States, and which were to be collected and administered by a collector approved by the President of the United States. This convention further provided that detailed statements of the operations under the arrangement were to be submitted to the Department of State of the United States.⁷ The convention with Honduras failed of ratification along with the first Nicaraguan loan convention.

Finally, it is asserted by Salvador that the establishment of a naval base on the Gulf of Fonseca violates the neutrality of Honduras which

⁶ This convention is printed in the Supplement to the Journal for 1908, Vol. II, p. 219.

⁷ For the text of this convention, see Supplement to the Journal for 1911, Vol. V, p. 274.

is provided for in Article 3 of the Convention of Washington of 1907 as follows:

Taking into account the central geographical position of Honduras and the facilities which owing to this circumstance have made its territory most often the theater of Central American conflicts, Honduras declares from now on its absolute neutrality in event of any conflict between the other Republics; and the latter, in their turn, provided such neutrality be observed, bind themselves to respect it and in no case to violate the Honduranean territory.

It is contended that the neutrality of navigable waters places upon bordering states the obligation not to fortify their coasts, citing Article 13 of the Treaty of Paris of 1858, Article 9 of the Congo agreement of November 4, 1911, between France and Germany, and Article 7 of the agreement of April 8, 1904, between France and England regarding the Straits of Gibraltar. These precedents are relied upon to establish the principle of international law that the fortification of points near neutral waters is prohibited as a menace to the existence of a state of neutrality. Consequently, it is maintained that the Government of Nicaragua can not authorize the establishment of a naval base which practically menaces the safety of the immediate neutral territory. It is further asserted that it is not lawful for the United States to infringe upon the neutrality of Honduras, as the character of mediator which it assumed in the Central American Conference prohibits it from being a party to the violation of the stipulations of the treaties which were the result of its good offices and mediation.

The protests of Costa Rica, Salvador and Honduras apparently received careful consideration in the United States Senate, for in giving its advice and consent to the ratification of the treaty, the Senate added the following amendment:

Provided, That whereas Costa Rica, Salvador, and Honduras have protested against the ratification of said convention in the fear or belief that said convention might in some respect impair existing rights of said states; therefore, it is declared by the Senate that in advising and consenting to the ratification of the said convention as amended such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that nothing in said convention is intended to affect any existing right of any of the said named states.

Even this assurance seems unsatisfactory, for Salvador has filed a formal notice with the United States that "it does not recognize the validity of the Nicaraguan treaty, which establishes a naval base in the Gulf of Fonseca, and that consequently the Government of Salvador will always work against the said treaty, with all the means and lawful procedures which existing conventions, international law and justice grant it, in order to invalidate the same in its effects." Costa Rica has also indicated its unwillingness to accept the treaty by bringing an action against Nicaragua to test its legality in the Central American Court of Justice.

GEORGE A. FINCH.

THE ENTRY OF PORTUGAL INTO THE EUROPEAN WAR

On February 23, 1916, the Portuguese Government seized German merchant vessels lying within its jurisdiction, claiming to do so under the provisions of certain treaties between Germany and Portugal. Germany protested against the seizure as unauthorized by the treaties in question and demanded the release of the vessels. This Portugal declined to do and on March 9, 1916, the German Minister at Lisbon handed the Portuguese Minister for Foreign Affairs the following declaration of war:

Since the outbreak of the war the Portuguese Government, by actions which are in conflict with her neutrality, has supported the enemies of the German Empire. The British troops have been allowed four times to march through Mozambique. The coaling of German ships was forbidden. The extensive sojourn of British war vessels in Portuguese ports, which is also in conflict with the laws of neutrality, was allowed; Great Britain was also permitted to use Madeira as a *point d'appui* for her fleet. Guns and materials of war were sold to Entente Powers, and even a destroyer was sold to Great Britain.

German cables were interrupted, the archives of the Imperial Vice-Consul in Mossamedes were seized, and expeditions sent to Africa were described as directed against Germany. At the frontier of German South-West Africa and Angola the German district commander and two officers and men were tricked into visiting Nauhla, and on October 19, 1915, were declared to be under arrest. When they tried to escape arrest they were shot at, and forcibly taken prisoners.

During the course of the war the Portuguese press and Parliament have been more or less openly encouraged by the Portuguese Government to indulge in gross insults on the German people. We repeatedly protested against these incidents in every individual case, and made most serious representations. We held the Portuguese Government responsible for all consequences, but no remedy was afforded us.

The Imperial Government, in forbearing appreciation of Portugal's difficult position, has hitherto avoided taking more serious steps in connexion with the attitude of the Portuguese Government. On February 23 the German vessels in Portuguese ports were seized and occupied by the military. On our protest, the Portuguese Government declined to go back from these forcible measures, and tried to justify

them by illegal (gesetzwidrig) interpretations of existing treaties. These interpretations appeared to the German Government to be empty evasions. It is a fact that the Portuguese Government seized a number of German vessels out of proportion to what was necessary for meeting the shortage of Portugal's tonnage, and that the Government did not attempt even once to come to an understanding with the German ship-owners, either directly or through the mediation of the German Government. The whole procedure of the Portuguese Government, therefore, represents a serious violation of existing laws and treaties.

The Portuguese Government by this procedure openly showed that it regards itself as the vassal of Great Britain, which subordinates all other considerations to British interests and wishes. Furthermore, the Portuguese Government effected the seizure of the vessels in a manner in which the intention to provoke Germany cannot fail to be seen; the German flag was hauled down in the German vessels, and the Portuguese flag with a war pennon was hoisted, and the flagship of the Admiral fired a salute.

The Imperial Government sees itself obliged to draw the necessary conclusions from the attitude of the Portuguese Government. It regards itself from now onward in a state of war with the Portuguese Government. (*London Times*, March 11, 1916.)

A few days later, on the 13th, Viscount de Alte, the Portuguese Minister to the United States, issued the following statement, showing that Portugal had entered the war at the request of Great Britain, its protector and friend:

Portugal is drawn into the war as a result of her long-standing alliance with England, an alliance that has withstood unbroken the strain of five hundred years.

The first treaty of alliance between the two countries was concluded June 16, 1373, by Ferdinand of Portugal and Edward III of England. Subsequent treaties have affirmed the alliance and defined its scope. It rests on a secure and permanent foundation. The foreign policies and the interests of the countries have almost invariably proved to be identical and the ideals of their people have never clashed. The dawn of the eighteenth century (1703) found the soldiers of Portugal and those of England fighting side by side in the war of the Spanish Succession. At the beginning of the nineteenth century Portuguese and British bled together on the battlefields of the Peninsula in the tremendous struggles brought about by the Napoleonic invasions of Portugal.

Like Belgium, Portugal desires nothing that belongs to any other nation; she has nothing to gain and much to lose in the present conflict. But she is ready, notwithstanding, to aid England to the full extent of her resources.

Portugal is not prepared to subscribe to the doctrine engendered by militarism that good faith must be made subscribent to expediency and that the interests of one nation may legitimately be fostered at the expense of the rights of others whenever backed by sufficient force. (Washington Post, March 14, 1916.)

A day later, that is to say on March 14, Sir Edward Grey, British

Secretary of State for Foreign Affairs, read the following statement in the House of Commons on behalf of the Premier, Mr. Asquith, who was unable to be present:

The Prime Minister, who unfortunately is unable to be present owing to temporary indisposition, has requested me to read to the House a statement which he intended to make on the subject of the entry of Portugal into the war.

The immediate cause of the declaration by Germany of a state of war with the most ancient of our Allies has been the decision of the Portuguese Government to requisition the German ships which, since the commencement of hostilities, have been lying in the home and colonial ports of Portugal. Had Portugal been entirely a neutral nation, without ties or alliances with any of the combatants, her action would nevertheless have been completely justified. The war has been the cause of a rapidly-increasing shortage of tonnage in all parts of the globe, and it became clear that in the interests of their country it was the duty of the Portuguese Government to make use of all the available ships in their harbours. This was their view and it was also urged upon them by His Majesty's Government. They accordingly proceeded to requisition the German ships in their ports, explaining to Germany the reasons which prompted them to take this action and promising eventually to indemnify the owners of the vessels. The German ships had been lying in their harbours for more than 18 months; they therefore fell within the broad principle that a state is entitled in cases of emergency to take the property of all individuals within its jurisdiction and to convert it to the public use—a right which is inherent in the sovereignty of the state and which cannot be challenged by any foreign Power.

But Portugal was not a neutral nation in the narrowest sense of the term. At the beginning of the war the Portuguese Government declared that in no circumstances would they disregard the duties of their ancient alliance with Great Britain; and now, as always, they have remained faithful to their obligations as our Allies. They were but following a course of action which would have injured no third party, for requisition would have been followed by payment in compensation, but the German Government saw fit to precipitate matters by a peremptory demand for an explanation, shortly followed by a declaration of war, thus altering the whole position as regards the payment of any compensation for the vessels.

It is to be observed that Germany, who now charged Portugal with a breach of neutrality, had herself in October and again in December, 1914, violated the territory of Portugal by raids into the Portuguese colony of Angola, and later by seeking to stir up a native rebellion in Portuguese East Africa.

Portugal may rest assured that Great Britain and the Allies will afford her all the assistance that she may require, and that, having been compelled to range herself on the side of the Allies, she will be welcomed as a gallant coadjutor in the defence of the great cause for which the present war is being waged. (London Times, March 15, 1916.

The purpose of the present comment is not to express an opinion as to the propriety of the action of Portugal, because neither the text of the treaties in question nor the Portuguese note to Germany justifying its action is before the writer, but to lay before the reader an official statement emanating from each of the three governments.

The ancient alliance between Portugal and Great Britain to which Sir Edward Grey refers dates apparently from the Treaty of Peace, Friendship and Alliance between England and Portugal, repeatedly reaffirmed and apparently still in effect, signed at London, on June 16, 1373, by which each country pledged itself to assist the other in case of war.¹ Of this very interesting treaty only the first article, which follows, can be quoted, although the document as a whole is very interesting reading, and shows how treaties were made in early days:

In the first place, we settle and covenant that there shall be from this day forward between our abovesaid Lord Edward, King of England and France, and the Lord Ferdinand, King of Portugal and Algarve, and the Lady Eleanor Queen and his Consort, their Successors in the aforesaid Kingdoms of England and Portugal, and their Realms, Lands, Dominions, Provinces, Vassals, and Subjects faithfully obeying them, whatsoever, true, faithful, constant, mutual, and perpetual Friendships, Unions, Alliances, and Leagues of sincere affection, and that as true and faithful Friends they shall henceforth reciprocally be Friends to Friends, and Enemies to Enemies, and shall assist, maintain, and uphold each other mutually by sea and by land against all Men that may live or die, of whatever dignity, station, rank, or condition they may be, and against their Lands, Realms, and Dominions.

They shall strive for and preserve, as much as in them lies, the personal safety, security, interest, and honour, and the harmlessness, conservation and restitution of their rights, property, effects, and Friends, wheresoever they be.

They shall everywhere faithfully prevent the hurts and injuries, disgrace or baseness which they know or which one Party knows to be at any future time intended or contemplated against the other Party, and shall provide remedies for them; and they shall as expeditiously as may be, by Letters or Messengers, or in any better way which they can contrive, without reserve and fully inform, forewarn, and usefully counsel the other Party against whom such things are meditating, relative to what has just been mentioned.

The treaty from which the above article has been quoted has been more fortunate than most documents of a like nature, because, although negotiated some five centuries and more ago, it is still in effect and has been broken by neither party, and the alliance and friendship it was meant to bring about still exists, witness the participation of Portugal in the present war.

JAMES BROWN SCOTT.

¹ For the text of this very interesting document see British and Foreign State Papers, Vol. I, Pt. 1, pp. 462-68.

JURISDICTION OVER PERSONS ON BOARD INTERNED BELLIGERENT VESSELS

A belligerent war vessel is, under ordinary circumstances, allowed to remain twenty-four hours and to enjoy but a limited hospitality in a neutral port. If the war vessel refuses to leave at the expiration of twenty-four hours, provided that the twenty-four hour rule be the law of the neutral country, as is the case with the United States, the vessel becomes a trespasser and the neutral government is authorized either to escort it to the high seas or to deprive it of its power to conduct hostilities; that is to say, to intern it, to use the technical phrase.

The practice of the United States in this matter was formed during the Russo-Japanese War in the cases of the Russian war vessels Aurora. Oleg and Zemtchug, which took refuge in American jurisdiction in 1905, and more especially in the case of the Russian transport or auxiliary cruiser Lena, which entered San Francisco harbor in 1904. In reply to the request of the Russian Ambassador that the vessel "might receive all aid compatible with neutrality," the Ambassador was advised, as stated by Professor Moore in his Digest, "that if the vessel was repaired, only such bare repairs could be allowed as might be necessary to render the vessel seaworthy and enable her to reach the nearest home port, and that even such repairs could be permitted only on condition that they should not prove to be too extensive." As the repairs required to make the Lena seaworthy would have amounted "to a renovation of the vessel," its captain yielded to the inevitable that his ship should be disarmed and be interned in American waters as a condition of being made seaworthy. The further action of the United States in this case, which may be said to have made the law on the subject, is thus stated by Professor Moore in his Digest:

The President, on the afternoon of the 15th of September, issued an order directing that the Lena be taken into custody by the naval authorities of the United States and disarmed under the following conditions: (1) That the vessel be taken to the Mare Island Navy-Yard and there disarmed by removal of small guns, breechblocks, small arms, ammunition, and ordnance stores, and such other dismantlement as might be prescribed by the commandant of the navy-yard; (2) that the captain of the Lena should give a written guarantee that she should not leave San Francisco till peace had been concluded, and that the officers and crew should be paroled not to leave San Francisco till some other understanding as to their disposal might be reached between the United States and both belligerents; (3) that, after disarmament, the vessel might be removed to a private dock for such reasonable repairs as would make her seaworthy and preserve her in good condition during detention, or be so repaired at the navy-yard, should the Russian commander so elect, and that

while at the private dock the commandant of the navy-yard should have the custody of the ship, and that the repairs should be overseen by an engineer officer to be detailed by him; (4) that the cost of repairs, of private docking, and of maintenance of the ship, officers, and crew while in custody should be borne by the Russian Government, but the berthing at Mare Island and the custody and surveillance of the vessel by the United States; (5) that the vessel, when repaired, if peace had not then been concluded, should be taken back to Mare Island and there held in custody till the end of the war. The Russian Ambassador expressed the adherence of his government to these conditions, but asked that the officers and crew of the vessel, except 5 officers and 100 seamen, who were necessary for her care, might be permitted to leave the United States. The Japanese Government, on the other hand, asked that all the officers and crew be detained in the United States till the termination of hostilities. The President decided that it would not be consistent with neutrality to grant the request for the repatriation of any of the officers or crew of the Lena, unless both the belligerents agreed to it. Without such an agreement he regarded the position of the men as being identical in principle with that of a military force entering neutral territory and there necessarily held by the neutral.

December 10, 1904, the Russian Ambassador asked that the captain and crew of the *Lena* might be permitted to celebrate the name day of the Emperor on the 19th of the month, by hoisting the national flag over the vessel, dressing the ship, and firing the imperial salute. The United States assented to the display of the national standard and the dressing of the ship, but found it impracticable to agree to the firing of the salute, in view of the fact that, as the *Lena* was not in commission, but was lying in a friendly port completely disarmed and in the custody of the United States till the end of the war, her character as a warship, including the function of saluting and the right to receive salutes, was in abeyance.¹

It is to be borne in mind that this action of the United States took place in 1904-5, before the meeting of the Second Hague Peace Conference, and therefore before the drafting of Convention No. 13 of the Second Conference, concerning the rights and duties of neutral Powers in naval war, Article 24 of which reads:

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

¹¹⁷ Moore's International Law Digest, pp. 999-1000.

It will be observed that Article 24 prescribes to all intents and purposes the action already taken by the United States, so that the article may be regarded as declaratory, not amendatory, of international law in so far as the United States is concerned.

From the action of the United States in the case of the Lena, and from the provisions of Article 24 of Convention 13, it is clear that the effect of internment is to withdraw from the vessel so treated the immunity from local laws which by custom men-of-war enjoy. United States allowed the Lena to display the Russian flag and to dress the ship on the name day of the Russian Emperor, but denied the vessel "the function of saluting and the right to receive salutes" because its "character as a warship * * * was in abeyance." According to the official commentary upon Convention 13, which was prepared by the distinguished French publicist, Professor Louis Renault, Article 24 is intended to assimilate the officers and crew of the interned ship to the officers and men of a belligerent army taking refuge in a neutral territory. He states: "In law their position is analogous to that of troops of a belligerent who seek refuge in neutral territory, and it has been agreed that the two cases should be controlled by one and the same rule." 2

JAMES BROWN SCOTT.

THE RECOGNITION OF THE DE FACTO GOVERNMENT IN MEXICO 1

In the October, 1914, number of the Journal (page 860), we concluded a series of editorial narratives of events in Mexico during the revolutionary period which started with the overthrow of Diaz by Madero in 1911. The recognition by the United States on October 19, 1915, of the *de facto* government presided over by General Venustiano Carranza as the chief executive makes it appropriate to set out the important events which have taken place since our last comment, which ended with the overthrow of General Huerta on July 20, 1914, and the occupation of Mexico City by the Constitutionalist Army on August 19, 1914. At that time Vera Cruz was still occupied by American troops

² The full text of Mr. Renault's report on Article 24 of Convention 13 is printed in a comment in this JOURNAL for April, 1915, pp. 488–489.

¹ The correspondence and documents referred to in this comment were transmitted by the President of the United States to the Senate in response to a resolution of January 6, 1916, requesting certain information relative to affairs in Mexico. They are printed as Senate Document No. 324, 64th Congress, 1st Session.

as the result of the difficulty with General Huerta over the Tampico flag incident. As stated in our last editorial on this subject, President Wilson had announced on September 15 that the American troops were to be withdrawn, but this did not actually take place until November 23, 1914.

According to a résumé of the Mexican constitutionalist revolution and its progress, submitted to the Secretary of State on October 7. 1915, by Mr. E. Arredondo, Confidential Agent of the Constitutionalist Government of Mexico at Washington, General Carranza, after taking his seat in the national palace in the city of Mexico, "called all the governors and leaders in command of troops to a meeting, which was to take place on the first day of October, 1914, for the purpose of discussing and adopting the program or platform which the Constitutionalist Government should follow prior to elections; the reforms which should be carried into effect; the date on which elections should be held, and all other matters of general interest which the circumstances might require." General Francisco Villa, the commander of the northern division of the Constitutionalist Army, declined to attend the meeting, repudiated the leadership of Carranza and called a convention of his own supporters at Aguascalientes. The two conventions met in Oc-The former retained General Carranza as Provisional tober, 1914. President, after he had offered to resign, and the latter selected General Eulalio Gutierrez, who was shortly afterwards deposed and was followed in office in rapid succession by several other members of the Villa faction. An effort to reconcile the differences between the two parties by a committee of Carranza generals, who appeared before the Aguascalientes convention, failed, and was followed by open hostilities between them.

In a decree issued at Vera Cruz on December 12, 1914, which reviewed briefly the events in the constitutionalist revolution from the usurpation of Huerta to the break with Villa, General Carranza states the apparent reason for the break between the two factions as follows:

The express declarations made on several occasions by the commander of the northern division advocating the establishment of constitutional order before the social and political reforms demanded by the country take place, clearly demonstrate that the insubordination of General Villa is of a strictly reactionary character, and contrary to constitutionalist activities, and has for a purpose to frustrate the complete success of the revolution, preventing the establishment of a pre-constitutional government intrusted with the enactment and enforcement of the reforms which have been the subject of the struggle which has been raging for the last four years.

To explain the military ends for which the fight against Villa was undertaken and to authorize during the continuance of the new struggle the laws covering the political and economic reforms which were the objects of the revolution, General Carranza decreed the following articles:

Article 1. The plan of Guadalupe of March 26, 1913, shall subsist until the complete triumph of the revolution, and, therefore, Citizen Venustiano Carranza shall continue in his post as first chief of the constitutionalist revolution and as depository of the executive power of the nation, until the enemy is overpowered and peace is restored.

Article 2. The first chief of the revolution and depository of the executive power of the Republic, shall enact and enforce during the struggle, all the laws, provisions, and measures tending to meet the economic, social, and political needs of the country, carrying into effect the reforms which public opinion demands as indispensable for the establishment of a regime which will guarantee the equality of Mexicans among themselves, agrarian laws favoring the creation of small landowners, the suppression of latifundia or large landholders, and the restoration to townships of the lands illegally taken from them; fiscal laws tending to establish an equitable system of taxation on real estate; laws tending to improve the condition of the rural laborer, the working man, the miner, and, in general, of the working classes; the establishment of municipal freedom as a constitutional institution; bases for a new system of organization of the army; amendments of the election laws in order to insure the effectiveness of suffrage; organization of an independent judicial power, in the feder-

- ² The plan of Guadalupe, signed by sixty-four officers of the troops of the State of Coahuila on the 26th of March, 1913, contains the following articles:
 - "1. Gen. Victoriano Huerta is hereby repudiated as President of the Republic.
 - "2. The legislative and judicial powers of the federation are also hereby disowned.
- "3. The governors of the States who still recognize the federal powers of the present administration, shall be repudiated thirty days after the publication of this plan.
- "4. For the purpose of organizing the army, which is to see that our aims are carried out, we name Venustiano Carranza, now governor of the State of Coahuila, as first chief of the army, which is to be called constitutionalist army.
- "5. Upon the occupation of the city of Mexico by the constitutionalist army, the executive power shall be vested in Venustiano Carranza, its first chief, or in the person who may substitute him in command.
- "6. The provisional trustee of the executive power of the Republic shall convene general elections as soon as peace may have been restored and will surrender power to the citizen who may have been elected.
- "The citizen who may act as first chief of the constitutionalist army in the States, whose government might have recognized that of Huerta, shall take charge of the provisional government and shall convene local elections, after the citizens elected to discharge the high powers of the federation may have entered into the performance of their duties as provided in the foregoing bases."

ation as well as in the States; revision of the laws relative to marriage and the civil status of persons; provisions guaranteeing the strict observance of the laws of reform; revision of the civil, penal, and commercial codes; amendment of judicial procedure, for the purpose of expediting and causing the effectiveness of the administration of justice; revision of laws relative to the exploitation of mines, petroleum, water rights, forests, and other natural resources of the country, in order to destroy the monopolies created by the old régime and to prevent the formation of new ones; political reforms which will insure the absolute observance of the constitution of Mexico, and, in general, all the other laws which may be deemed necessary to insure for all the inhabitants of the country the effectiveness and full enjoyment of their rights, and their equality before the laws.

Article 3. In order to continue the struggle and to carry into effect the reforms referred to in the preceding article, the chief of the revolution is hereby expressly authorized to convene and organize the constitutionalist army and direct the operations of the campaign; to appoint the governors and military commanders of the States and to remove them freely; to effect the expropriations on account of public utility which may be necessary for the distribution of lands, founding of townships, and other public services; to negotiate loans and issue obligations against the national treasury indicating the property which shall guarantee them; to appoint and remove freely federal employees of the civil administration and of the States and to fix the powers of each of them; to make, either directly or through the chiefs he may appoint, requisitions for lands, buildings, arms, horses, vehicles, provisions, and other elements of war; and to create decorations and decree recompenses for services rendered to the revolution.

Article 4. Upon the success of the revolution, when the supreme chieftainship may be established in the city of Mexico and after the elections for municipal councils in the majority of the States of the Republic, the first chief of the revolution, as depository of the executive power, shall issue the call for election of congressmen, fixing in the calls the dates and terms in which the elections shall be held.

Article 5. Once the federal congress has been installed, the chief of the revolution shall render an account before it of the use he may have made of the powers with which he is vested hereby, and he shall especially submit the reforms made and put into effect during the struggle, in order that congress may ratify them, amend them, or supplement them, and to the end that those which it may see fit may be raised to the rank of constitutional precepts, before the reestablishment of constitutional order.

Article 6. The federal congress shall convene the people for the election of president of the Republic, and as soon as this takes place the first chief of the revolution shall deliver to the president elect the executive power of the nation.

Article 7. In case of absolute default of the present chief of the revolution and in the meantime the generals and governors proceed to the election of the person who is to take his place, the chief office shall be temporarily filled by the commander of the army corps at the place where the revolutionary government may be at the time the default of the first chief occurs.

The contest for supremacy between the forces of Carranza and Villa continued unabated and with varying success, neither side apparently

being able to obtain any decisive advantage over the other. Mexico City changed hands several times between the forces of Carranza, Villa and Zapata. The military operations in the meantime added to the distress of the Mexican people and to the dissipation of their substance. The conditions below the southern border of the United States became so chaotic that President Wilson felt constrained on June 2, 1915, to issue a public warning to the Mexican factions to get together and act for the relief of their prostrate country. This document, which was an official statement of the conditions then existing in Mexico and the attitude of the United States, read as follows:

For more than two years revolutionary conditions have existed in Mexico. The purpose of the revolution was to rid Mexico of men who ignored the constitution of the Republic and used their power in contempt of the rights of its people; and with these purposes the people of the United States instinctively and generously sympathized. But the leaders of the revolution, in the very hour of their success, have disagreed and turned their arms against one another. All professing the same objects, they are, nevertheless, unable or unwilling to cooperate. A central authority at Mexico City is no sooner set up than it is undermined and its authority denied by those who were expected to support it. Mexico is apparently no nearer a solution of her tragical troubles than she was when the revolution was first kindled. And she has been swept by civil war as if by fire. Her crops are destroyed, her fields lie unseeded, her work cattle are confiscated for the use of the armed factions, her people flee to the mountains to escape being drawn into unavailing bloodshed, and no man seems to see or lead the way to peace and settled order. There is no proper protection either for her own citizens or for the citizens of other nations resident and at work within her territory. Mexico is starving and without a government.

In these circumstances the people and Government of the United States cannot stand indifferently by and do nothing to serve their neighbor. They want nothing for themselves in Mexico. Least of all do they desire to settle her affairs for her, or claim any right to do so. But neither do they wish to see utter ruin come upon her, and they deem it their duty as friends and neighbors to lend any aid they properly can to any instrumentality which promises to be effective in bringing about a settlement which will embody the real objects of the revolution—constitutional government and the rights of the people. Patriotic Mexicans are sick at heart and cry out for peace and for every self-sacrifice that may be necessary to procure it. Their people cry out for food and will presently hate as much as they fear every man in their country or out of it, who stands between them and their daily bread.

It is time, therefore, that the Government of the United States should frankly state the policy which in these extraordinary circumstances it becomes its duty to adopt. It must presently do what it has not hitherto done or felt at liberty to do, lend its active moral support to some man or group of men, if such may be found, who can rally the suffering people of Mexico to their support in an effort to ignore, if they cannot unite, the warring factions of the country, return to the constitution of the Republic so long in abeyance, and set up a government at Mexico City which

the great Powers of the world can recognize and deal with, a government with whom the program of the revolution will be a business and not merely a platform. I therefore publicly and very solemnly call upon the leaders of faction in Mexico to act, to act together, and to act promptly for the relief and redemption of their prostrate country. I feel it to be my duty to tell them that, if they cannot accommodate their differences and unite for this great purpose within a very short time, this Government will be constrained to decide what means should be employed by the United States in order to help Mexico save herself and serve her people.

Closely following the issuance of the above warning, General Carranza issued a declaration to the Mexican nation under date of June 11, 1915, in which he stated that "the Constitutionalist Government has control of over seven-eighths of the national territory; that it is organizing public administration in 20 out of 27 States of the Republic and in more than half of the other 7 States; that it controls all the maritime ports on the Gulf and on the Pacific Ocean with the exception of Guaymas, and all the ports of entry on the northern and southern frontiers, with the exception of Piedras Negras, Ciudad Juarez, and Nogales; that more than thirteen million of the fifteen which represent the population of the country—that is to say, nine-tenths of the total population of the Republic—are governed by the administration [over which] I preside; that day after day the factions are being routed and dispersed, their offensive action being limited at present to acts of brigandage, and that within a short time the occupation of the City of Mexico will contribute to make the action of the Constitutionalist Government more harmonious and efficient in all the territory of the Republic. Therefore, our country is nearing the end of its revolution and the consolidation of a definite peace, based on conditions of welfare and justice." In view of the alleged definite possession of the sovereignty of the country by the Constitutionalist Government, General Carranza thought the time had arrived when that government should be recognized by the other nations, especially the United States, and he appealed to the warring factions still engaged in armed opposition against the Constitutionalist Government, to submit to that government in order to expedite the reëstablishment of peace and to consummate the work of the revolution. With a view to realizing these purposes, General Carranza gave the following pledges of conduct to be observed by his government:

First. The constitutionalist government shall afford to foreigners residing in Mexico all the guarantees to which they are entitled according to our laws, and shall amply

protect their lives, their freedom, and the enjoyment of their rights of property, allowing them indemnities for the damages which the revolution may have caused to them, in so far as such indemnities may be just and which are to be determined by a procedure to be established later. The government shall also assume the responsibility of legitimate financial obligations.

Second. The first concern of the constitutionalist government shall be to reestablish peace within the province of law and order, to the end that all the inhabitants of Mexico, both native and foreign, shall equally enjoy the benefits of true justice and be interested in cooperating in the support of the government emanating from the revolution. The commission of crimes of the common order shall be punished. In due time an amnesty shall be enacted in keeping with the necessities of the country and the situation, which in no way shall exempt those under it from the civil responsibilities they may have incurred.

Third. The constitutionalist laws of Mexico, known under the name of laws of reform, which establish the separation of the church and the state and which guarantee the individual right of worship in accordance with his own conscience and without offending public order, shall be strictly observed; therefore, no one shall suffer in his life, freedom, and property because of his religious beliefs. Temples shall continue to be the property of the nation according to laws in force, and the constitutionalist government shall again cede for the purposes of worship those which may be necessary.

Fourth. There shall be no confiscation in connection with the settlement of the agrarian question. This problem shall be solved by an equitable distribution of the lands still owned by the government; by the recovery of those lots which may have been illegally taken from individuals or communities; by the purchase and expropriation of large tracts of land, if necessary; by all other means of acquisition permitted by the laws of the country. The constitution of Mexico forbids privileges, and therefore all kinds of properties, regardless of who the owners may be, whether operated or not, shall in the future be subject to the proportional payment of a tax in accordance with a just and equitable valuation.

Fifth. All property legitimately acquired from individuals or legal governments, and which may not constitute a privilege or a monopoly, shall be respected.

Sixth. The peace and safety of a nation depends from the clear understanding of citizenship. Therefore, the government shall take pains in developing public education, causing it to spread throughout the whole country, and to this end it shall utilize all cooperation rendered in good faith, permitting the establishment of private schools subject to our laws.

Seventh. In order to establish the constitutional government, the government by me presided over shall observe and comply with the provisions of Articles 4, 5, and 6 of the decree of December 12, 1914, [printed supra, 358, 360].

What happened after the issuance of President Wilson's warning of June 2, 1915, may better be told in the language of Secretary of State Lansing, in a letter to the President dated February 12, 1916: "Several weeks after the statement was issued, as the factional differences seemed to be no nearer to a settlement, this government sounded the six rank-

ing diplomatic representatives of Latin-America as to whether they would confer and advise with this government in regard to formulating some practicable plan, if possible, for the solution of the Mexican problem. Under instructions from their respective governments, these representatives signified their desire to cooperate with this government, and the first conference with the representatives was held on August 5, last.

"As a result of that conference the ambassadors of Argentina, Brazil, and Chile, the ministers of Bolivia, Uruguay, and Guatemala, and the Secretary of State of the United States, acting severally, signed an appeal to the civil and military leaders of the revolutionary factions in Mexico, suggesting that the latter hold a conference to discuss a peaceful settlement of their differences and offered to act as intermediaries to arrange the time, place, and other details of such conference. Identical communications in this sense were, under date of August 13 and 14 last, sent by telegraph to all generals, governors, and other leaders known to be exercising civil or military authority in Mexico." For the information of our readers, the appeal referred to is quoted textually:

Washington, D. C., August 11, 1915.

The undersigned, the Secretary of State of the United States, the ambassadors extraordinary and plenipotentiary of Brazil, Chile, and Argentina, and the envoys extraordinary and ministers plenipotentiary of Bolivia, Uruguay, and Guatemala, accredited to the Government of the United States of America, acting severally and independently, unanimously send to you the following communication:

Inspired by the most sincere spirit of American fraternity, and convinced that they rightly interpret the earnest wish of the entire continent, have met informally at the suggestion of the Secretary of State of the United States to consider the Mexican situation and to ascertain whether their friendly and disinterested help could be successfully employed to reestablish peace and constitutional order in our sister Republic.

In the heat of the frightful struggle which for so long has steeped in blood the Mexican soil, doubtless all may well have lost sight of the dissolving effects of the strife upon the most vital conditions of the national existence, not only upon the life and liberty of the inhabitants, but on the prestige and security of the country. We can not doubt, however—no one can doubt—that in the presence of a sympathetic appeal from their brothers of America, recalling to them these disastrous effects, asking them to save their motherland from an abyss—no one can doubt, we repeat—that the patriotism of the men who lead or aid in any way the bloody strife will not remain unmoved; no one can doubt that each and every one of them, measuring in his own conscience his share in the responsibilities of past misfortune and looking forward to his share in the glory of the pacification and reconstruction of the country, will

respond, nobly and resolutely, to this friendly appeal and give their best efforts to opening the way to some saving action.

We, the undersigned, believe that if the men directing the armed movements in Mexico—whether political or military chiefs—should agree to meet, either in person or by delegates, far from the sound of cannon, and with no other inspiration save the thought of their afflicted land, there to exchange ideas and to determine the fate of the country—from such action would undoubtedly result the strong and unyielding agreement requisite to the creation of a provisional government, which should adopt the first steps necessary to the constitutional reconstruction of the country—and to issue the first and most essential of them all, the immediate call to general elections.

An adequate place within the Mexican frontiers, which for the purpose might be neutralized, should serve as the seat of the conference; and in order to bring about a conference of this nature the undersigned, or any of them, will willingly, upon invitation, act as intermediaries to arrange the time, place, and other details of such conference, if this action can in any way aid the Mexican people.

The undersigned expect a reply to this communication within a reasonable time; and consider that such a time would be 10 days after the communication is delivered, subject to prorogation for cause.

It will be preferable also to state the result of this appeal in the language of the Secretary of State contained in the same letter. attempt to bring the factions together for a conference failed. stantially all the commanders and others in authority who were associated with Gen. Villa, replied directly and independently, in varied language, accepting the suggestion for a conference. On the other hand, all the commanders and others in authority who were affiliated with Gen. Carranza replied briefly to the effect that the appeal had been referred to Gen. Carranza, whose superior authority they acknowledged, and who would make such reply as he deemed proper. inference to be drawn was plain. On the one hand, there seemed to be no central organization among the Villista forces, while, on the other hand, submission to a central authority was evidenced in the replies of the Carranzistas. The unity and loyalty of the Carranzistas appeared to indicate the ultimate triumph of that faction, especially as the Carranzista forces were then in control of approximately 75 per cent of the territory of Mexico. Accordingly the conferees, after careful and impartial consideration of all the circumstances, decided unanimously to recommend severally to their respective governments that in their opinion the government of which Gen. Carranza was the leader should be recognized as the de facto government of Mexico."

In aid of General Carranza's claim to recognition, his Confidential Agent at Washington on October 7, 1915, transmitted copies of General Carranza's public declarations of December 12, 1914, and June 11, 1915, containing the guarantees to both nationals and foreigners above quoted. In this letter the Confidential Agent assured the Secretary of State that the lives and property of foreigners in Mexico would be respected in accordance with the practices established by civilized nations and the treaties in force between Mexico and other countries. He also stated that the Carranza Government would recognize and satisfy indemnities for damages caused by the revolution, to be settled in due time and according to justice. Another letter from the Confidential Agent to the Secretary of State, dated October 8, 1915, assured the United States that "the laws of reform, which guarantee individual freedom of worship according to everyone's conscience, shall be strictly Therefore the Constitutionalist Government will respect everybody's life, property, and religious beliefs without other limitation than the preservation of public order and the observance of the institutions in accordance with the laws in force and the constitution of the Republic."

On October 19, 1915, the Secretary of State of the United States sent a note to the Confidential Agent extending recognition to the de facto government in Mexico, of which General Venustiano Carranza is the chief executive, and suggesting the reciprocal appointment of diplomatic representatives by the two governments. The Secretary of State stated on February 12, 1916, that "the said de facto government has since been recognized by substantially all the countries of Latin America; also by Great Britain, France, Italy, Russia, Japan, Austria-Hungary, Germany, and Spain; and several other countries have recently announced their intention of extending recognition."

In the same report, the Secretary of State, referring to the ability of the *de facto* government to fulfill its promises and obligations to protect American rights and property in Mexico, said:

The Department's information indicates that the *de facto* government is now in control of all but a few sections of Mexico, and that, bearing in mind that the nation is just emerging from years of domestic strife, it may be said that within the territory which it controls it is affording, in all the circumstances, reasonably adequate protection to the lives and property of American citizens and that it is taking steps to extend its authority over and restore order in sections now in the hands of hostile factions. In this connection, however, it should be stated that the lawless conditions which have long continued throughout a large part of the territory of Mexico are not easy to remedy and that the great number of bandits who have infested certain districts and devastated property in such territory can not be suppressed immediately,

but that their suppression will require some time for its accomplishment, pending which it may be expected that they will commit sporadic outrages upon lives and property.

GEORGE A. FINCH.

THE JAPANESE LAW OF NATIONALITY

The Japanese law of nationality was amended during the last session of the Imperial Diet, and as amended received the Imperial sanction and was promulgated as Law No. 27 on March 15, 1916. Its recent origin would alone justify comment; its importance requires it. The most important changes will therefore be mentioned and the reasons for them stated.

Article 18 of the previous law provided that a Japanese woman lost her Japanese nationality when she married a foreigner. This was thought to be unsatisfactory, because if she married a foreigner who, for one reason or another, had lost his nationality, the woman herself would be in the unfortunate position of her husband. Article 18, as amended, reads: "When a Japanese by becoming the wife of a foreigner has acquired the husband's nationality, then such Japanese loses Japanese nationality."

Article 20 of the previous law reads: "A person who has acquired foreign nationality by his own choice loses Japanese nationality." But this article is to be read in connection with Article 24, which provided that a Japanese subject of 17 or more years of age could not divest himself of Japanese nationality unless he had performed his military service or was exempt therefrom. This article is retained in the revised law, but again Articles 17 and 24 thereof are to be construed by a new provision called Article 20-bis, which reads as follows:

In case a Japanese subject who has acquired foreign nationality by reason of his or her birth in a foreign country has domicile in that country, he or she may be expatriated with the permission of the Minister of State for Home Affairs.

The application for the permission referred to in the preceding paragraph shall be made by the legal representative in case the person to be expatriated is younger than fifteen years of age. If the person in question is a minor above fifteen years of age or a person adjudged incompetent, the application can only be made with the consent of his or her legal representative or guardian.

A step-father, a step-mother, a legal mother or a guardian may not make the application or give the consent prescribed in the preceding paragraph without the consent of the family council.

A person who has been expatriated loses Japanese nationality.

And in connection with Article 20-bis the following paragraph, added to Article 26, is to be considered:

In case the person who has lost Japanese nationality in accordance with the provision of Article 20-bis is younger than fifteen years of age, the application for the permission prescribed in the preceding paragraph shall be made by the father who is the member of the family to which such person belonged at the time of his expatriation. Should the father be unable to do so, the application shall be made by the mother; if the mother is unable to do so, then by the grandfather; and if the grandfather is unable to do so, then by the grandmother.

The following explanation of the reason for the amendments, which have been briefly stated, and their effect, is taken from articles by Mr. T. Miyaoka, formerly Counselor of the Japanese Embassy in the United States and a distinguished publicist and lawyer of Tokyo, contributed to the *Japanese Times* of March 9, 1916, and the *Japan Advertiser* of Tokyo for March 17, 1916:

Under the conscription laws of the Empire a boy of seventeen is already a soldier in the Japanese army although his time of service under "colors" does not commence until he is twenty. A male Japanese from the age of seventeen is a part of the army until he completes his fortieth year. If he is an officer in the army, he is either in the active service, in the first reserve, the second reserve, or the national army called the landsturm. If he is neither a commissioned officer nor a warrant officer, then he is a plain soldier in the landsturm, in the active service, in the reserve (i. e., the first reserve) or in what the Germans call the landwehr. A boy is not called upon to serve under "colors," that is to say, he is not required to receive military training in regimental barracks until he is twenty, but from seventeen to twenty he is already a soldier in the landsturm.

The Japanese law of nationality as it stands to-day and as it will stand when the amendatory law goes into operation, rests upon the principle that a Japanese soldier may not cease to be one by expatriating himself. This principle remains unchanged, but Article 20-bis provides that a Japanese boy who has acquired a foreign nationality by reason of his birth in the territories of such country, provided he has domicile in that country, may divest himself of the Japanese nationality if his father or other parental authority takes the necessary step for him before he is fifteen; or if he has attained the age of fifteen he may take the same step with the consent of his father or other parental authority until he attains the age of seventeen.

In short the object of the amendatory law is to permit the expatriation of Japanese boys born in Hawaii or in any of the States of the American Union before he is fifteen or at latest before he is seventeen.

JAMES BROWN SCOTT.

THE STATUS OF THE FRYE CASE

Over a year has now elapsed since Germany, on April 4, 1915, assumed liability for the sinking of the American vessel William P. Frye by a German auxiliary cruiser on January 27, 1915, but the case still remains a subject of diplomatic negotiations between the two governments. Germany's prompt admission of liability gave rise to the belief that the matter would be speedily adjusted, but the obstacles which that government has since placed in the way of settlement cannot help but create the feeling that the admission of liability was made more for the purpose of allaying public indignation in the United States, which it succeeded in doing, than with any immediate intention of making the reparation which such an admission called for.

Germany's refusal to settle through diplomatic channels the amount of damages due to the owners of the Frye and its proposal that these questions, together with the question of the legality of the capture and destruction according to the Declaration of London, be referred to her own prize court at Hamburg, are stated in our comment in the April, 1915 number, page 497. The technical discussions which then ensued over the interpretation of the century-old treaties between the United States and Prussia were likewise set out in our issue of July, 1915, page 703. It appeared at that time that a settlement was in sight, according to which damages would be decided by experts to be appointed by the two governments and the question of interpretation submitted to arbitration. Since then, however, additional differences of opinion on minor points have been interjected which seem to make the solution as far off as ever.

In the first place, with reference to the ascertainment of the amount of damages by experts, one to be appointed by each government, the United States proposed the selection of an umpire to whom the matter might be referred in case of a disagreement between the two national experts. This was a simple and ordinarily unobjectionable proposal, but Germany objected on the ground that "in the cases of the ascertainment of damages hitherto arranged between the German Government and a neutral government from similar causes, the experts named by the two parties have always reached an agreement as to the amount of damages without difficulty; should it not be possible, however, to reach an agreement on some point it could probably be settled by diplomatic negotiation." (German note of September 19, 1915.) It will be

remembered that a settlement of the amount of damages through diplomatic channels was first suggested by the United States as the proper course to pursue, but the suggestion was given up in favor of Germany's counter-proposal for a commission of experts. The United States is now asked to return to its original proposal, after the delay and expense of trying Germany's method of settlement by experts in case it fails merely because of the lack of the ordinary precaution of providing an umpire.

In response to the German objection to an umpire the United States waived the nomination of such an official in advance, but insisted that "in agreeing to this arrangement it should be understood in advance that in case the amount of indemnity is not settled by the joint commission of experts or by diplomatic negotiation, the question will then be referred to an umpire if that is desired by the Government of the United States." (American note of October 12, 1915.) Germany still demurred, however, stating that "the consultation of an umpire would depend materially upon whether the differences of opinion between the two experts pertained to questions of principle or merely to the appraisement of certain articles. The consultation of an umpire could only be considered at all in the case of appraisements of this nature." (German note of November 29, 1915.)

A second disagreement has arisen over the place of meeting of the commission of experts. The United States in its note of October 12 proposed that "its meetings should be held in the United States because * * any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined there than elsewhere." To this Germany replied on November 29 as follows:

The German Government regrets that it cannot comply with the wish of the American Government to have the experts meet in Washington, since the expert nominated by it, Dr. Greve, of Bremen, director of the North German Lloyd, is unable to get away from here, and furthermore would be exposed to the danger of capture during a voyage to America in consequence of the conduct of maritime war by England contrary to international law. Should the American expert likewise be unable to get away, the two experts might perhaps get in touch with each other by correspondence.

In the same note Germany added:

Should the American Government insist on its demands for the meeting of the experts at Washington or the early choice of an umpire, the only alternative would

be to arrange for fixing the damages by diplomatic negotiation. In such an event the German Government begs to await the transmission of a statement of particulars of the various claims for damages accompanied by the necessary proofs.

A further difference exists as to the form of the arbitration under the Hague Conventions to determine the question of interpretation of the Prussian-American treaties. The United States agreed to Germany's request that the negotiations over the form of the agreement of arbitration be conducted in Berlin upon a draft to be submitted by Germany, but suggested that the arbitration should be by the summary procedure provided for by the Hague Convention rather than by the longer form of arbitration. To this suggestion Germany again demurred, holding that "the summary procedure is naturally intended only for differences of opinion of inferior importance, whereas the German Government attaches very particular importance to the interpretation of the Prussian-American treaties which have existed for over 100 years." (German note of November 29, 1915.)

To the American Government's inquiry as to whether Germany would govern its naval operations in accordance with the German or American interpretation of the treaty stipulations pending the arbitral proceedings, Germany replied, on September 19, 1915, that it had "issued orders to the German naval forces not to destroy American merchantmen which have loaded conditional contraband, even when the conditions of international law are present, but to permit them to continue their voyage unhindered if it is not possible to take them into port. On the other hand it must reserve to itself the right to destroy vessels carrying absolute contraband wherever such destruction is permissible according to the provisions of the Declaration of London." (German note of September 19, 1915.) The American answer to this note had apparently in view not only the Frye case, which involves the sinking of a merchant ship by a surface warship, but Germany's warfare against merchant vessels by submarines. On October 12, 1915, Mr. Lansing replied as follows:

Without admitting that the Declaration of London is in force, and on the understanding that the requirement in Article 50 of the Declaration that "before the vessel is destroyed all persons on board must be placed in safety" is not satisfied by merely giving them an opportunity to escape in life boats, the Government of the United States is willing, pending an arbitral award in this case, to accept the Declaration of London as the rule governing the conduct of the German Government in relation to the treatment of American vessels carrying cargoes of absolute contraband.

The German note of November 29, 1915, contains the following answer on this point:

The German Government quite shares the view of the American Government that all possible care must be taken for the security of the crew and passengers of a vessel to be sunk. Consequently, the persons found on board of a vessel may not be ordered into her lifeboats except when the general conditions, that is to say, the weather, the condition of the sea, and the neighborhood of the coasts afford absolute certainty that the boats will reach the nearest port. For the rest the German Government begs to point out that in cases where German naval forces have sunk neutral vessels for carrying contraband, no loss of life has yet occurred.

No further correspondence upon the *Frye* case has been made public up to the date of the present writing.

GEORGE A. FINCH.

THE GROTIUS SOCIETY

The papers read before the Grotius Society in the year 1915, which is the first year of its existence, deal with the problems of the war, and the volume containing the papers, which is the first, it is to be hoped, of a series, might properly be made the subject of a book review. It is believed, however, better to devote a short comment to the Society and the nature of its work, allowing the papers to speak for themselves and to leave the interested reader free to form his own judgment upon them. The point to bear in mind is that leaders of thought in Great Britain have been minded to form a society of international law, which, in the language of the rules, "shall be a British Society and its meetings are intended to take place in the United Kingdom." In the very interesting introduction, written by Henry Goudy, the distinguished Regius Professor of Civil Law in the University of Oxford and Vice President of the Society, the reason for this action is thus stated:

The object of founding the Society has been to afford an opportunity to those interested in international law of discussing from a cosmopolitan point of view the acts of the belligerent and neutral states in the present war, and the problems to which it is almost daily giving birth. Had the International Law Association, whose seat is in London, been able to carry on its work, there would hardly have been need for such a society, but that influential body embraces among its members a considerable number of foreigners of different nationalities, both belligerent and neutral, and its activity is for the time being embarrassed. Even could it meet, its discussions would probably be embittered or wanting in that spirit of harmony essential to any satisfactory result.

The Grotius Society is intended to be restricted, as regards membership, to British subjects; it is to be a purely British Society. In this respect it will follow the example of the Association of International Law in the United States, which has an established position in that country and has done good work. Our Rules, however, enable us to elect, as occasion offers, foreign international lawyers as honorary and corresponding members, and also to invite non-members to read papers to us and take part in our discussions on proper introduction.

The purpose of the present comment is to explain the nature and purpose of the Society and to congratulate its members upon the action which they have taken in founding a Society, which will, it is hoped, survive the war, contribute to the development of international law, promote its understanding and its study, and popularize its principles, for these appear to be the purposes set forth in Article 2 of the Rules:

The objects of the Society shall be to afford facilities for discussion of the laws of war and peace, and for interchange of opinions regarding their operation, and to make suggestions for their reform, and generally to advance the study of international law.

As pointed out in another comment, the formation of national societies of international law is of good omen, because, if democracy or representative government is to take over foreign affairs or is to exercise a controlling influence in the future, as it has not done in the past, the people of each and every country belonging to the society of nations must fit itself for the responsibility they thus assume. It was a wise remark attributed to the Right Honorable Robert Lowe upon the passage of the second Reform Bill, that we must now educate our masters, and monarchs and ministers for foreign affairs must learn that the people of their country are not merely masters in domestic affairs, but likewise masters in foreign affairs, and that the reasons which led the people to take domestic affairs into their own hands must inevitably lead them also to take over foreign affairs.

Now, there should be many agencies to show the people of any and every country their duties as well as their rights, for it is a fact frequently pointed out by Mr. Root, that people are better instructed in their rights and are more tenacious in maintaining them than in their duties; yet, if we are one day to have the conduct of nations governed by law, the people must needs understand their duties under law and be as scrupulous in their performance as they are tenacious of their rights. Systematic instruction in the school, the college, and the university is one way of reaching different classes of people. Another and

a broader way, perhaps, is through the creation of societies of international law with popular membership, in order that the principles of international law shall be discussed together and a knowledge of the principles disseminated. But, without attempting to single out one method of reaching a public to the disadvantage of another, we should welcome all, and the founding of the Grotius Society, happy alike in its name and its rules, should be a subject of congratulation to those believing in the importance of national societies.

It is encouraging to note that in Professor Goudy's introduction to the first volume of the Society's proceedings, reference is made to a distinguished German philosopher; that his views are quoted in German; and that these views meet with outspoken approval. The editors of the little volume express the belief that the war problems, with which the papers deal, "are considered in a spirit detached from a narrow national standpoint and in accordance with those principles of international law which rest on the general consent of civilized nations." The quotation from Immanuel Kant would seem to be in line with this belief, and Professor Goudy's statement concerning the violation of international law by all belligerents is a further evidence of the spirit of inquiry animating the members of the Society and their desire to discover truth even although it may condemn their own government.

Without dwelling upon the contents of the proceedings, it is believed that the readers of the Journal would be glad to have some extracts from the introduction written by Professor Goudy freed from comment. The following passages are therefore quoted:

The era of perpetual peace among civilized nations is indeed still a long way off much further than pacifists too hastily suppose—but it is none the less the ideal goal of international law. It is not a mere dream of poets and philosophers. It is-

"The vision whereunto

*

* Toils the indomitable world."

In the present frightful conflagration the goal may seem to have been thrown immeasurably back, but international law, despite the manifold and flagrant disregard of its rules, will not be overthrown. It needs no great gift of prophecy to foretell that once peace is obtained there will be an immense change in the attitude of the peoples of Europe towards wars and the causes that lead to wars. For good or evil there will be a powerful trend towards socialism. Immanuel Kant, in his wellknown essay on "Perpetual Peace among States," has said that the only form of government by which such peace can hope to be realized is the republican, i. c.,

one in which the people participate in the making of laws, and that international law must be based on a federation of such free states.¹

There is only room for a further quotation, the brief paragraph in which Professor Goudy condemns the violation of international law by "each and all of the belligerents," whether the belligerent be British or foreign, and rejects the excuses which have been pleaded in justification of the violation of rules of international law:

What strikes me as one of its saddest features is the comparative indifference with which well-established rules of international law have been violated by each and all of the belligerents, when they have run counter to their apparent material interests. The loss of moral force and self-respect by the wrong-doing state seems to be regarded as unimportant when set off against its material interests. Thus, the carefully-drafted rules of the Hague Conventions and the Declaration of London have been in large measure, to use a vulgarism, "scrapped"; even the time-sanctioned declarations of the Treaty of Paris have not, in the matter of blockade, escaped violation. Excuses and defences for such violations have, no doubt, been set up, but as a rule they are of a kind that international law ought emphatically to reject.

James Brown Scott.

THE CHINESE SOCIAL AND POLITICAL SCIENCE ASSOCIATION

On December 5, 1915, the first meeting of the Chinese Social and Political Science Association was held in Peking, at the residence of His Excellency Lou Tseng-tsiang, Premier and Minister for Foreign Affairs of the Chinese Republic. At the meeting the constitution of the association was adopted, which, by reason of its interest, is printed in full as an appendix to this brief notice; and the officials for the first year were chosen as follows: President, His Excellency Mr. Lou; First Vice President, His Excellency Paul S. Reinsch, American Minister to China; Second Vice President, Mr. Tsao Ju-lin, Vice Minister for Foreign Affairs; Secretary, Mr. C. C. Woo, Counsellor to the Ministry for Foreign Affairs.

Article IV of the constitution states that "each member will then [after payment of entrance fee] be entitled during his membership to a

¹ [Professor Goudy's footnote: See Kant's Werke (Ed. Hartenstein, 1868), vol. vi, p. 408 et seq., "Die bürgerliche Verfassung in jedem Staate soll republicanisch sein," and "Das Völkerrecht soll auf einen Föderalismus freier Staaten gegründet sein." In this there is much truth. The peoples, if they are to escape destruction by wars, must have the control of foreign policy and the issues of war and peace entirely in their own hands.

copy of the Chinese Social and Political Science Review published by the Association." Dr. H. L. Yen, Counsellor to the Ministry for Foreign Affairs, was elected Managing Editor of the Review.

The objects of the association, as stated by the constitution, are: "(1) the encouragement of the scientific study of law, politics, sociology, economics and administration; and (2) the promotion of fellowship among men of similar interests."

These objects can be considered from a national and partisan interest, and the danger is always present that they will be so considered. The founders of the association, however, while recognizing the proneness of the individual to partisanship, nevertheless endeavors to exclude it from the association itself by the following statement, that "the Association as such will not assume a partisan position upon any political question nor involve itself in practical politics."

Membership in the Association is divided into three classes, endowment members, life members, and ordinary members. Any person may become a member on the invitation of the Executive Council or on the proposal of one member seconded by another and approved by the Council. (Art. III of the Constitution.)

It will be observed that the Chinese society has an American prototype in the American Political Science Association, and it is officially stated that the founders of the society took as their model the constitution of the American association. It will also be observed that the Chinese association is not a society of international law in express terms, as its scope includes the social and economic sciences; but it is stated that it will emphasize international law and politics, and that one of its main purposes will be to mediate between Chinese thought on these matters and the general scientific thought of the world. An additional purpose, and certainly a very worthy one, is to be the establishment of a library on law, politics, and economics for the use of officials and scientifically educated people, and it is pleasing to be informed that negotiations for the purchase of suitable property have already been begun.

The Review is to be a quarterly magazine, and from the statement of the Managing Editor, it is to deal "mainly with topics on politics, international and general public law [there is to be a special department devoted to international law], administration, economics and sociology." It is to be published in English, in order that it may reach the public beyond its borders, and the first number is to make its appearance in the month of April of the present year. The Chinese public, however,

is not to be overlooked, and it is the intention of the association to issue at a later date a Chinese edition.

From an authoritative communication upon which this brief comment is based, it is stated that His Excellency Dr. Wellington Koo, now Minister at Washington, and Dr. Yen, the Managing Editor of the Review, took a leading part in forming the association; that it was suggested in the first instance by our fellow-countryman and representative Dr. Paul S. Reinsch, and that Professor W. F. Willoughby, of Princeton, and Professor Henry C. Adams, of Michigan University, two American scholars at present in China in an advisory capacity, greatly aided the Chinese scholars in the realization of their project.

The founding of the Chinese Political Science Association, in which international law looms large, can be fairly taken as proof of the fact that students and scholars, as well as men of affairs in the different countries, realize that the world's great need is international law and the application of its principles to the conduct of nations. The trend toward democracy makes it at once apparent that not merely the chosen few who carry on government, but that the many who control in the end must be familiar with international law, and therefore societies are springing up in different countries for the express purpose of specializing in international law. The Institute of International Law, founded in 1873, is an international body and is for the elect. national societies aim to include the elect, as well as persons interested in international law, although they may not claim to be experts on the There is a very widespread feeling that the cards must be laid on the table, to use a very ordinary expression, and that, although diplomatists may meet behind closed doors, their agreements, to be binding, must be approved by a body or bodies representing the people and be published as laws before they bind the contracting parties.

Of course, we must not cherish delusions, for the mere transfer of foreign affairs from the select few to the controlling many will not usher in the millennium; but just as representative government has succeeded the secret and irresponsible government of monarchs and their henchmen, and is justified by its fruits, so representative government must and will say the final word in international, just as it has in constitutional matters. The formation of national societies is an indication of the understanding of this need on behalf of the publicists in those nations in which they have been formed, and the time is not, it is believed, far distant when they will be organized in all countries

belonging to the society of nations. They exist in Japan, France, in each of the twenty-one American republics, and they are being formed in some other countries; and only the other day the Grotius Society was founded in England.

The American publicists certainly wish their Chinese colleagues every possible success in their important undertaking.

JAMES BROWN SCOTT.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: Ann. sc. pol., Annales des sciences politiques, Paris; Vie Int., La Vie Internationale, Brussels; Arch. dipl., Archives Diplomatiques, Paris; B., boletin, bulletin, bolletino; P. A. U., bulletin of the Pan-American Union, Washington; Clunet, J. de Dr. Int. Privé, Paris; Doc. dipl., France, Documents diplomatiques; B. Rel. Ext., Boletin de Relaciones Exteriores; Dr., droit, diritto, derecho; D. O., Diario Oficial; For. rel., Foreign Relations of the United States; Ga., gazette, gaceta, gazzetta; Cd., Great Britain, Parliamentary Papers; Int., international, internacional, internazionale; J., journal; J. O., Journal Officiel, Paris; L., Law; L'Int. Sc., L'Internationalism Scientifique, The Hague; M., Magazine; Mém. dipl., Memorial diplomatique, Paris; Monit., Moniteur belge, Brussels; Martens, Nouveau recueil générale de traités, Leipzig; Q. dip., Questions diplomatiques et coloniales; R., review, revista, revue, rivista; Reichs G., Reichs-Gesetzblatt, Berlin; Staats., Staatsblad, Netherlands; State Papers, British and Foreign State Papers, London; Stat. at L., United States Statutes at Large; Times, The Times (London).

August, 1914.

- 3 European War. Italy. Declaration of neutrality. French text: R. gén. de dr. int. pub., 22 (doc.): 177.
- 4 EUROPEAN WAR. SWITZERLAND. Declaration of neutrality. French text: Recueil des lois fédérales, 1914:353; R. gén. de dr. int. pub., 22 (doc.): 183.
- 4 European War. Germany—Serbia. On August 4 (July 22) the Serbian Government instructed its minister to leave Germany, with the legation staff and consulate. On August 6 (July 24) the German Minister to Serbia not yet having left Belgrade, his passports were sent to him with the request that he leave Serbian territory. This date was formerly given as August 9. English text: Serbian Blue Book, Documents Nos. 49 and 50; this Journal, 9:222, 227.
- 4 European War. Uruguay. Declaration of neutrality in war between Germany and Russia and Germany and France. B. rel. ext. (Uruguay), 1914:653; R. gén. de dr. int. pub., 22 (doc.): 189.
- 5 EUROPEAN WAR. NETHERLANDS. Declaration of neutrality in the war between Belgium and Germany, Germany and Great Britain.

August, 1914.

- Staatscourant, extra number, Aug. 5, 1914; Livre Gris belge, annexe, No. 53; R. gén. de dr. int. pub., 22 (doc.): 177; Cd. 7627.
- 7 European War. Haiti. Neutrality proclamation in European war. R. gén. de dr. int. pub., 22 (doc.): 177.
- 7 European War. Uruguay. Declaration of neutrality in war between Germany and England, Germany and Belgium. B. rel. ext. (Uruguay), 1914:653; R. gén. de dr. int. pub., 22 (doc.): 189.
- 8 European War. Switzerland. Note to France declaring Swiss neutrality in aerial affairs. J. O., 1914:7301; R. gén. de dr. int. pub., 22 (doc.): 187.
- 8 European War. Venezuela. Declaration of neutrality in war of Germany and Austria with France, Russia, Serbia, Belgium and Great Britain. B. rel. ext. (Venezuela), 1914:137; R. gén. de dr. int. pub., 22 (doc.): 199.
- 14 European War. Uruguay. Declaration of neutrality in the war between France and Austria. B. rel. ext. (Uruguay), 1914:683; R. gén. de dr. int. pub., 22 (doc.): 190.
- 14 European War. Uruguay. Declaration of neutrality in the war between Austria and England, Austria and Russia. B. rel. ext. (Uruguay), 1914:683; R. gén. de dr. int. pub., 22 (doc.): 190.
- 25 European War. France. Decree relative to the application of the Declaration of London to the present war. J. O., Aug. 26, 1914.

October, 1914.

14 France—Guatemala. French decree putting into force the convention for the reciprocal protection of trade-marks, signed Feb. 28, 1914. J. O., Nov. 1, 1914.

November, 1914.

- 1 European War. Persia. Declaration of neutrality. R. gén. de dr. int. pub., 22 (doc.): 180.
- 6 European War. France. French decree relative to the application of rules of international maritime war to the present war. J. O., Nov. 7, 1914.

May, 1915.

26 European War. Italy. Italy declared a blockade of Austria. R. gén. de dr. int. pub., 22 (doc.): 215.

May, 1915.

30 European War. Italy. Italy declared a blockade of the littoral of Albania. R. gén. de dr. int. pub., 22 (doc.): 215.

June, 1915.

- 1 European War. Great Britain. Great Britain declared a blockade of the coast of Asia Minor. J. O., 1914:3641; R. gén. de dr. int. pub., 22 (doc.): 216.
- 21 Great Britain—Honduras. Ratifications exchanged of a treaty of commerce and navigation, signed May 5, 1910. English and Spanish texts: G. B., Treaty series, 1915, No. 7.

July, 1915.

12 Great Britain—Switzerland. Ratifications exchanged of the treaty of friendship, commerce and reciprocal establishment, signed March 30, 1914. French and English texts: G. B., Treaty series, 1915, No. 6.

September, 1915.

30 Great Britain—Siam. Accession of the Federated Malay States of Perak, Selangor, Negri Sembilan and Pahang to the extradition treaty between the United Kingdom and Siam, signed March 4, 1911. G. B., Treaty Series, 1915, No. 13.

October, 1915.

20 European War. Great Britain. Instructions to armed merchant ships issued. Made public by the British Admiralty March 2, 1916. Text: New York Times, March 3, 1916. English translation of the German copy of these instructions presented by Germany to the United States. Text issued by the Department of State.

November, 1915.

- 10 France—United States. Agreement effected by exchange of notes extending time for the appointment of the commission under Article II of the treaty of September 15, 1914. French and English texts: U. S. Treaty Series, No. 609-A.
- 16-Dec. 20. Spain—United States. Agreement effected by exchange of notes extending time for the appointment of the commission under Article II of the treaty of September 15, 1914. English and Spanish texts: U. S. Treaty Series, No. 605-A.

November, 1915.

16 Portugal—United States. Agreement effected by exchange of notes extending time for the appointment of the commission under Article II of the treaty of February 4, 1914. English and Portuguese texts: U. S. Treaty Series, No. 600-A.

December, 1915.

- 4 European War. Austria—United States. Austrian submarine reported to have shelled American bark *Petrolite. N. Y. Times*, Dec. 5, 1915.
- 7 France—United States. French decree putting into effect the parcel-post convention between French Guiana and the United States, signed August 21, 1914. J. O., Dec. 14, 1914.

January, 1916.

- 1 European War. The British P. and O. Steamer *Persia* torpedoed in the Mediterranean on way to Bombay. *N. Y. Times*, Jan. 2, 24, 1916.
- 4 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. The United States sent note to Great Britain relative to the removal of United States mail from steamships. Text issued by Department of State; N. Y. Times, Jan. 27, 1916.
- 7 EUROPEAN WAR. GERMANY—UNITED STATES. Germany presented note to the United States relative to submarine warfare. Text: N. Y. Times, Jan. 8, 1916.
- 8 European War. Germany—United States. Germany replied in the *Frye* case to the American note of October 14, 1915; pending decision of disputed points by arbitration American vessels will be sunk only when carrying absolute contraband and when passengers and crew can reach port safely. *N. Y. Times*, Jan. 9, 1916.
- 8 European War. The Allies seized the Greek Island of Melos. N. Y. Times, Jan. 9, 1916.
- 11 Mexico. Mexican bandits killed 16 Americans taken from train about 50 miles west of Chihuahua City, Mexico. N. Y. Times, Jan. 12, 1916; statement issued by the Department of State. N. Y. Times, Jan. 13, 1916.
- 11 EUROPEAN WAR. GERMANY. Germany issued new rules relating to the entry of foreigners into Germany and German occupied territory. N. Y. Times, Jan. 12, 1916.

January, 1916.

- 13 European War. French troops occupy the Island of Corfu belonging to Greece. N. Y. Times, Jan. 13, 1916.
- 13 European War. Montenegro. Cettinge, capital of Montenegro, occupied by Austrians. N. Y. Times, Jan. 14, 1916.
- 13 GENERAL VICTORIANO HUERTA died at El Paso, Texas. N. Y. Times, Jan. 14, 1916.
- 16 European War. France published list of contraband modifying lists of Nov. 6, 1914, and Oct. 14, 1915; J. O., 1916:744.
- 19 CHILE—UNITED STATES. Ratifications exchanged of treaty for the advancement of peace, signed July 24, 1914. English and Spanish texts: U. S. Treaty Series, No. 621.
- 21 American Institute of International Law. The Institute, composed of delegates from 21 American Republics, made public a Declaration of the Rights of Nations. This Journal, 10:124.
- 22 Ecuador—United States. Ratifications exchanged of treaty for the advancement of peace, signed Oct. 13, 1914. English and Spanish texts: U. S. Treaty Series, No. 622; Spanish text: B. rel. ext. (Ecuador), 8:761.
- 24 (Feb. 6.) European War. Russia. Russian ukase proclaimed extending contraband list. This list replaces the lists of Aug. 10–23, 1915, and is, with slight changes, identical with the British Proclamation of October 14, 1915. Texts: London Gazette, No. 29512.
- 25 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. The United States sent note to Great Britain relative to restraints on commerce. Great Britain replied Feb. 19, 1916. Text issued by the Department of State.
- 27 European War. Great Britain. Additional list of contraband published. London Gazette, 29452, 29454.
- 27 EUROPEAN WAR. ITALY—UNITED STATES. The United States sent note to Italy on the subject of the arming of merchant ships. N. Y. Times, Jan. 28, 1916.

February, 1916.

- 1 European War. Austria. Austria informed the United States that the *Persia* was not sunk by an Austrian submarine. N. Y. Times, Feb. 2, 1916.
- 1 European War. Germany. A German prize crew brought into

February, 1916.

- Hampton Roads, Va.; the British passenger liner *Appam*, with 450 passengers. On February 19, the Liverpool owners libelled the ship. *N. Y. Times*, Feb. 2, Feb. 20, 1916.
- 8 European War. The Federal Grand Jury indicted 32 persons, including German and Turkish consuls, for alleged conspiracies to wreck ammunition plants and to furnish supplies to German war vessels at the beginning of the war. N. Y. Times, Feb. 9, 1916.
- 10 EUROPEAN WAR. ITALY. Italian decree amending the decree of June 24, 1915, providing for the confiscation of enemy merchant vessels by way of reprisal for certain hostile acts. Text: Great Britain, Misc., No. 18, 1915; London Gazette, No. 29512.
- 10 European War. Germany and Austria announced that after February 29 they will treat armed merchant ships of enemy countries as war vessels. Text: N. Y. Times, Feb. 11, 1916.
- 15 EUROPEAN WAR. UNITED STATES—THE ALLIES. Note presented by the French Ambassador to the United States, on behalf of the Allies, in reply to the note of the United States dated January 4, relative to the seizure of neutral mail. Text issued by the Department of State.
- 15 European War. Great Britain. British Orders in Council issued authorizing the taking over, whenever necessary, of war materials, food, factories, etc., and the exercise of more stringent control of shipping; a royal proclamation was issued restricting the importation of paper, certain kinds of paper manufactures, tobacco, furniture wood, stone and slate. London Gazette, 29475.
- 16 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. Great Britain replied to the note of the United States dated January 25, relative to the restraints on commerce. Text issued by the Department of State.
- 16 EUROPEAN WAR. Officially announced in Paris that Great Britain, France and Russia have renewed their pledge not to end hostilities without Belgium being re-established in independence. N. Y. Times, Feb. 17, 1916.
- 17 European War. Sweden issued appeal to United States for cooperation with other neutral countries in an effort to cause Great Britain to cease interfering with mails. N. Y. Times, Feb. 18, 1916.

February, 1916.

- 18 European War. Great Britain—United States. The British cruiser Laurentic stopped the American steamer China on the high seas about 10 miles from the entrance of the Yangtzekiang, boarded her with an armed party and despite the protests of the captain, removed from the vessel 28 Germans, 8 Austrians and 2 Turks, including physicians and merchants. These were taken prisoners to the military barracks at Hongkong. On February 23 the United States demanded the release of these persons. On March 16, Great Britain replied refusing the demand. Text issued by the Department of State.
- 18 United States—Nicaragua. The United States Senate consented to and advised the ratification of a proposed treaty with Nicaragua, under which the United States is to acquire a perpetual right of way along the San Juan River and the Lake of Nicaragua for an interoceanic canal by the payment of \$3,000,000 in gold. As originally negotiated the treaty contained provision for American supervision tantamount to American protection. The Senate amended the treaty to cover American supervision of the expenditure of the \$3,000,000. Text: N. Y. Times, Feb. 19, 1916.
- 20 European War. A neutral conference met in Stockholm, Sweden, for discussion of means to end the war. N. Y. Times, Feb. 21, 1916.
- 23 EUROPEAN WAR. PORTUGAL—GERMANY. Portugal seized all German ships in Portuguese waters. N. Y. Times, Feb. 24, 1916.
- 23 EUROPEAN WAR. GREAT BRITAIN. Premier Asquith announced in the House of Commons that England would continue the war till Belgium and Serbia recovered full measure and more for what they had sacrificed. N. Y. Times, Feb. 24, 1916.
- 28 Death of Henri Harburger, President of the Institut de droit international.
- 24 European War. President Wilson in letters to the foreign relations committees of the two houses of Congress asked that the question of warning Americans to stay off armed merchantmen be voted upon. In both houses the resolutions containing such warnings were tabled. Congressional Record, 53:3556,4223,5966.

March, 1916.

- 1 European War. Cameroons. Notice of the raising of the blockade of the Cameroons, West Africa. J. O., 1916:1642.
- 2 EUROPEAN WAR. UNITED STATES—GERMANY. The Department of State sent to the German Ambassador the decision relating to the status of the German prize, the *Appam*, brought into Hampton Roads, Feb. 1, 1916. N. Y. Times, March 3, 1916.
- 5 EUROPEAN WAR. AUSTRIA—UNITED STATES. The United States sent note to Austria relating to the shelling of the American bark *Petrolite* on December 4, 1915. N. Y. Times, March 6, 1916.
- 8 European War. Germany—United States. Germany sent memorandum to United States explaining attitude in controversy over submarines. Text: N. Y. Times, March 9, 1916.
- 9 EUROPEAN WAR. GERMANY—PORTUGAL. Germany declared war on Portugal to date from 3.30 p. m. Passports were sent the Portuguese Minister in Berlin. Text: N. Y. Times, March 10, 1915.
- 9-15 Mexico-United States. On March 9, Pancho Villa, with a band of Mexicans raided Columbus, New Mexico, firing many buildings, and killing seventeen Americans, eight of whom were soldiers. On the same day, March 9, the Secretary of State sent a note to the de facto government of Mexico with information of the intention of the United States to pursue and punish those concerned in the raid. N. Y. Times, March 10, March 12. On March 12, the Mexican Government sent a reply dated March 10. Text: N. Y. Times, March 12. On the same day, March 12, Carranza issued a proclamation to the Mexican people, stating that permission to send troops into Mexico would only be granted to the United States in return for reciprocal permission to Mexico to send troops into the United States, and calling upon the Mexican people to protect their rights and sovereignty. Text: N. Y. Times, March 13. On March 13 the United States sent a note to the Mexican Government accepting the offer of Mexico to grant permission to pursue bandits into Mexican territory in return for reciprocal permission for Mexican troops to pursue bandits into American territory and stating that the United States considered the agreement in effect. Text: N. Y. Times,

March, 1916.

- March 14. On March 15, American troops entered Mexican territory on the authorized punitive expedition. N. Y. Times, March 16, 1916.
- 16 EUROPEAN WAR. GREAT BRITAIN—UNITED STATES. Great Britain replied to the note of the United States dated February 23, relative to passengers taken from the American steamer China, February 18, on the high seas near the entrance to the Yangtzekiang, refusing to release the persons captured. Text issued by the Department of State.
- 17 EUROPEAN WAR. BRAZIL—GERMANY. Brazil seized all German ships in Brazilian waters. N. Y. Times, March 17, 1916.
- 17 Mexico—United States. The United States Senate passed a concurrent resolution extending assurances to the *de facto* government of Mexico that American troops are entering Mexico on a purely punitive expedition and that the sovereignty of Mexico would not be encroached upon. *Congressional Record*, 53:4889.
- 24 European War. Sussex. The French channel steamer Sussex torpedoed without warning. Text of French Commission of Inquiry: N. Y. Times, April 6, 1916.
- 30 European War. Great Britain. Order in Council issued declaring Art. 19 of the Declaration no longer in force, and stating that neither ship nor cargo will be immune from capture on the sole ground that she is at the moment of capture on the way to a non-blockaded port, and making other changes in the rules. Text: London Gazette, No. 29526.

INTERNATIONAL CONVENTIONS

ADHESIONS, RATIFICATIONS, DENUNCIATIONS

AGRICULTURE. May 10, 1913.

Signed by Argentine Republic, Bolivia, Brazil, Chile, Ecuador, Paraguay, Peru and Uruguay. Spanish text: B. rel. ext (Ecuador), 8:764.

Ratifications:

Ecuador, Nov. 10, 1915. B. rel. ext. (Ecuador), 8:764.

AUTOMOBILES. Paris, October 11, 1909.

Accessions:

Dutch East Indies. J. O., 1916:58.

Collisions and Salvage at Sea. Brussels, September 23, 1910. Ratifications:

Uruguay, July 24, 1915. G. B. Treaty Series, 1915, No. 10.

COPYRIGHT. Berne, March 20, 1914.

Ratifications:

Italy, with reservation to take effect Dec. 23, 1914. G. B. Treaty Series, 1915, No. 10.

INDUSTRIAL PROPERTY. Paris, Madrid, Washington, 1883, 1900, 1911.
Ratifications:

Brazil, Oct. 20, 1914. G. B. Treaty Series, 1915, No. 10.

Phosphorus. Berne, September 26, 1906.

Accessions:

Great Britain for Canada, Sept. 20, 1914. G. B. Treaty Series, 1915, No. 10.

PUBLIC HEALTH. Rome, December 9, 1907.

Accessions:

France for French Cochin China, June 26, 1914 G. B. Treaty Series, 1915, No. 10.

RADIOTELEGRAPH. London, July 5, 1912.

Accessions:

Bolivia, Oct. 13, 1915. G. B. Treaty Series, 1915, No. 10; J. O., Feb. 9, 1916.

Newfoundland, Feb. 9, 1915. G. B. Treaty Series, 1915, No. 10; J. O., Feb. 9, 1916.

Peru, July 12, 1915. G. B. Treaty Series, 1915, No. 10; J. O., Feb. 9, 1916.

Tonga, May 29, 1915. G. B. Treaty Series, 1915, No. 10; J. O., Feb. 9, 1916.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN 1

Alien. Order of Secretary of State, Aug. 28, 1915. (St. R. & O. 1915, 1040.) 11/6d.

Alien enemies repatriated from India on the S. S. Golconda. Correspondence with the United States Ambassador respecting the safety of. (Cd. 8163.) 1d.

Baralong, H. M. Auxiliary Cruiser. Memorandum of the German Government in regard to incidents alleged to have attended the destruction of a German submarine and its crew by H. M. auxiliary cruiser Baralong on the 19th August, 1915, and reply of H. M. Government thereto. (Cd. 8144.) 3d.

Borneo. Agreement between the United Kingdom and the Netherlands relating to the boundary between the State of North Borneo and the Netherland possessions in Borneo, signed at London, Sept. 28, 1915. With map. (Treaty series, 1915, No. 12.) 4d.

British prisoners of war and interned civilians in Germany, Correspondence with the United States Ambassador respecting the treatment of. (Cd. 8108.) 9d.

Bulgaria. Proclamation, Oct. 16, 1915, extending to the war with Bulgaria the proclamations and orders in council (other than an order in council of Aug. 4, 1914) now in force relating to the war. (St. R. & O. 1915, 1003). 1½d.

Cyprus. Order in council regarding Mussulman religious property. Nov. 30, 1915. (St. R. & O. 1915, 1195.) 1½d.

Declaration of London. Order in council, Oct. 20, 1915. (St. R. & O. 1915, 1019.) $1\frac{1}{2}$ d.

England and Spain. Letters, despatches, and state papers relating to the negotiations between, preserved in the archives at Vienna, Simancas, Besacon, and Brussels. Vol. XI. Edward VI-Mary, 1553. 10s. 7d.

¹ Official publications of Great Britain and many of the British colonies may be purchased of Wyman & Sons, Ltd., Fetter Lane, E. C., London, England.

European War. Correspondence relating to the alleged ill-treatment of German subjects captured in the Cameroons. With appendices. (Cd. 7974.) 6½d.

- ———. Correspondence respecting military operations against German possessions in the Western Pacific. (Cd. 7975.) 4d.
- ———. Declaration between the United Kingdom, France, Italy, Japan, and Russia engaging not to conclude peace separately. Signed at London, Nov. 30, 1915. (Treaty series, 1915, No. 14.) 1d.
- ———. Naval and military despatches relating to operations in the war. Part IV. Despatch, Dec. 11, 1915, from General Sir Ian Hamilton, describing the operations in the Gallipoli Peninsula, including the landing at Suvla Bay. 3d.

Extradition treaty between the United Kingdom and Siam of March 4, 1911. Accession of the Federated Malay States to. Bangkok, Sept. 30, 1915. (Treaty series, 1915, No. 13.) 1d.

Germany, Sea-borne commerce of. Statement of the measures adopted to intercept the. (Cd. 8145.) 1½d.

Government War Obligations Act. (5 & 6 Geo. V., ch. 96.) 1d.

Interned aliens, British born wives and children of. Circular, Dec. 9, 1915. $1\frac{1}{2}$ d.

Internment camp at Ruhleben. Correspondence with the United States Ambassador respecting conditions in the. (Cd. 8161.) 3½d.

Italian decrees relative to enemy merchant vessels, together with the Italian Naval Prize Regulations. (Cd. 8104.) 1½d.

Merchant shipping. Order in council further postponing the coming into operation of the Merchant Shipping Convention Act, 1914, until July 1, 1916. Nov. 30, 1915. (St. R. & O. 1915, 1198.) 1½d.

Money orders, exchange of, between British and French Protectorates in West Africa, Agreement between the United Kingdom and France concerning, signed at London, Sept. 22, 1915. (Treaty series, 1915, No. 11.) 1d.

Naval Prize (Bulgaria.) Order in council, Nov. 10, 1915, authorizing the Commissioners for executing the Office of Lord High Admiral to require the constitution of prize courts. (St. R. & O. 1915, 1073.) 1½d.

Switzerland, Proclamation prohibiting the exportation of certain articles to, unless consigned as therein specified. Dec. 22, 1915. (St. R. & O. 1915, 1217.) 1½d.

Trading with the enemy. Proclamation regarding Liberia and Portuguese East Africa. Nov. 10, 1915. (St. R. & O. 1915, 1070.) 1½d.

Trading with the Enemy (Extension Powers) Act. (5 & 6 Geo. V., Ch. 98.) 1d.

Treaties, etc., between the United Kingdom and foreign states. Accessions, withdrawals, etc. (Treaty series, 1915, No. 10.) 1d.

Treaty series, 1915. Index to. (Treaty series, 1915, No. 15.) 1d.

UNITED STATES 2

Aeronautics, National Advisory Committee for. Message of the President transmitting report of, for period March 3 to June 30, 1915. Dec. 15, 1915. 1 p. (H. doc. 402.) State Dept.

Arbitration of outstanding claims between Great Britain and United States. Feb. 25, 1916. 2 p. (H. doc. 794.) State Dept.

Armed merchantmen. Declaration of Paris, 1856; Armed Merchantmen, from Moore's Digest of International Law; Armed Merchantmen, by A. Pearce Higgins, from the American Journal of International Law for October, 1914; Resistance against Lawful Exercise of Right of Stoppage, Visit, and Search, etc., by George Schramm; Armed Merchantmen, by W. J. M. von Eysinga; The Government and the War, by George Harvey, from North American Review, May, 1915. 1916. 54 p. (S. doc. 332.) Paper, 5c.

Arms and armor. Hearings on S. 1417 to erect armor plant for United States. 1916. 162 p. 10 pl. Naval Affairs Committee.

——. Report to accompany S. 1417. Feb. 8, 1916. 4 p. (S. rp. 115.) Paper, 5c.

Articles of war, revision of. Report to accompany S. 3191 to amend Sec. 1342, Revised Statutes, being articles of war; with hearings. Feb. 9, 1916. 100 p. (S. rp. 130.) Paper, 10c.

China, United States Court for. Report to accompany S. 4014 to supplement existing legislation relative to. Feb. 3, 1916. 3 p. (S. rp. 101.) Foreign Relations Committee.

Chinese in United States. Treaty, laws, and rules governing admission of Chinese; rules approved Oct. 15, 1915. 48 p. Paper, 5c.

Citizenship. Compilation of certain Departmental circulars relating to citizenship, registration of American citizens, issuance of passports, etc. 1915. 88 p. Paper, 10c.

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Outline course in, to be used in public schools for instruction of foreign and native born candidate for adult-citizenship responsibilities. 1916. 28 p. Naturalization Bureau.

Claim of Norway on account of detention of members of crew of Norwegian ship *Ingrid*. Communication from State Dept. with accompanying papers. Jan. 7, 1916. 2 p. (S. doc. 237.) State Dept.

——. Report to accompany S. 3264. Jan. 20, 1916. 1 p. (S. rp. 60.) Foreign Relations Committee.

Claims, Report in relation to, presented by Austria-Hungary, Greece, and Turkey on account of injuries inflicted on their nationals during riots in South Omaha, Nebr., Feb. 21, 1909. Jan. 14, 1916. 19 p. (H. doc. 576.) State Dept.

——. Report to accompany S. 3680 to authorize payment of indemnities. Feb. 3, 1916. 3 p. (S. rp. 103.) Foreign Relations Committee.

European War, 1914. Report on medico-military aspects of, from observations taken behind allied armies in France; by A. M. Fauntleroy. 1915. 146 p. il. 5 pl. 74 p. of pl. Cloth, 60c.

French Spoliation Claims, Syllabi of opinions prepared by Judge Howry of the Court of Claims. 17 p. Court of Claims.

——. Reprint with additional matter. 34 p. Court of Claims.

Hawaii. Report to accompany S. 1428 to reimburse fire insurance companies for payments made for property destroyed by fire in suppressing bubonic plague. Feb. 9, 1916. 9 p. (S. rp. 119.) Claims Committee.

Immigration, Commissioner General of. Annual report for fiscal year 1915. 272 p. 2 pl. Paper, 20c.

Immigration of aliens into United States. Report to accompany H. R. 10384. Jan. 31, 1916. 7 p. (H. rp. 95, pt. 1.) Paper, 5c.

——. Views of minority. Feb. 8, 1916. 4 p. (H. rp. 95, pt. 2.) Paper, 5c.

International Commission for Equitable Distribution of Waters of the Rio Grande. Opinions as to best method of preserving boundary by preventing flood waters from disturbing and changing boundary line, and of impounding and utilizing the same by the inhabitants of the United States and Mexico. 1916. 9 p. State Dept.

International High Commission. Statement of William G. McAdoo, Secretary of the Treasury, at hearing on H. R. 8235 to provide for maintenance of United States section of International High Commission, so that said section may cooperate with other sections of International

High Commission in taking action upon recommendations of First Pan American Financial Conference in regard to establishing closer and more satisfactory financial and commercial relations between Central and South American republics and United States. Jan. 12, 1916. 25 p. Foreign Affairs Committee.

- ——. Report to accompany H. R. 8235. Jan. 17, 1916. (H. rp. 45.) Foreign Affairs Committee.
- ——. H. R. 8235. Feb. 7, 1916. 1 p. (Pub. No. 15.) State Dept. International Joint Commission on Boundary Waters between United States and Canada: Hearings in re levels of Lake of the Woods and its tributary waters and their future regulation and control, Sept. 7–14, 1915. 511 p. Paper, 35c. State Dept.
- ———. Hearings and arguments on applications of St. Croix Water Power Co. and Sprague's Falls Manufacturing Co., Ltd., for approval of obstruction, diversion, and use of waters of St. Croix River. 1915. 195 p. 1 tab. Paper, 15c. Order and opinion, filed Jan. 29, 1916. 13 p. Paper, 5c. State Dept.

International Peace Tribunal. Letter addressed to John F. Shafroth by Oscar T. Crosby relative to. Jan. 17, 1916. 7 p. (S. doc. 245.) Paper, 5c.

Korea, Report submitting certain correspondence between representatives of the United States and Korea relative to the occupation of Korea. Feb. 23, 1916. 21 p. (S. doc. 342.) State Dept.

Maritime Canal Co. of Nicaragua, Letter inclosing report of operations of. Dec. 6, 1915. 2 p. (H. doc. 433.)

Merchant Marine. Report upon maintenance of a lobby to influence legislation on ship-purchase bill. Jan. 5, 1916. 2 pts. in 1, 16 p. (S. rp. 25, 2 pts.) Special Committee to Investigate Alleged Ship Purchase Lobby.

Mexico, Information relative to affairs in, with accompanying papers. Feb. 17, 1916. 55 p. (S. doc. 324.) Paper, 5c.

Military policy. Statement of proper military policy for United States, September, 1915. 29 p. [Issued as an appendix to report of Secretary of War.] War College Division, War Dept.

Munition plants, private. Address on peril of, delivered at World's Peace Conference held at The Hague in 1913, by G. H. Perris. 7 p. (S. doc. 312.) Paper, 5c.

Narcotics. Compilation of Treasury decisions relating to act of Dec. 17, 1914, issued Feb. 2-Nov. 5, 1915. 41 p. Paper, 5c.

National defense. Address of Lindley M. Garrison, Secretary of War, New York City, Jan. 17, 1916. 8 p. War Dept.

- ———. Confidence of neutral nations. Hearing, Jan. 13, 1916. 20 p. Military Affairs Committee.
- ——. Hearings on bills for reorganization of army and for creation of reserve army. Statement of Lindley M. Garrison. pt. 1, 58 p. Military Affairs Committee.
- ———. Hearings on S. J. Res. 91 creating joint subcommittee to investigate conditions relating to national defense. Statement of Francis G. Newlands. 1916. 7 p. *Military Affairs Committee*.
- ———. Hearings on bills for reorganization of army and for creation of reserve army. 1916. 1053 p. il. 1 tab. Military Affairs Committee.
- ——. Speech delivered before National Security League on Jan. 22, 1916, at Washington, D. C., by Henry Cabot Lodge. 11 p. (S. doc. 263.) Paper, 5c.
- ——. Address delivered before 16th Annual Meeting of National Civic Federation, Jan. 18, 1916, Washington, D. C., with letter on same subject to National Security League, dated Jan. 19, 1916, by Samuel Gompers. 15 p. (S. doc. 311.) Paper, 5c.

Naturalization, Commissioner of. Annual report for fiscal year 1915. 35 p. Naturalization Bureau.

Naturalization law, Syllabus of, aid to public-school teachers in instruction of aliens in requirements of naturalization law. 1916. 10 p. Naturalization Bureau.

Naval warfare. Report of Secretary of Navy on building of four warships, of type, power and speed which, based on knowledge gained from war in Europe, are best suited for war on the sea, and also value and uses in naval warfare of aeroplanes, dirigibles, balloons and submarines. Dec. 14, 1915. 5 p. (H. doc. 389.) Paper, 5c.

Navigation laws, Comparative study of principal features of laws of United States, Great Britain, Germany, Norway, France, and Japan, with bibliography. 1916. 190 p. il. Paper, 20c.

Neutrality. Washington's policies of neutrality and national defense. Address delivered before Washington Association of New Jersey, at Morristown, N. J., Feb. 22, 1916, by Henry Cabot Lodge. 12 p. (S. doc. 343.) Paper, 5c.,

Pan American Financial Conference. Actas del primer Congreso

Financiero Panamericano convocado de acuerdo con la autorización del Congreso de los Estados Unidos de América, y reunido bajo la dirección del William G. McAdoo, Secretario de Hacienda del Propio País, Washington, del 24 al 29 de Mayo de 1915. 760 p. il. *Treasury Dept.*

Panama Canal. Measurement of Vessels for imposing tolls. Hearings, Jan. 11–Feb. 11, 1916. 55 p. Interstate and Foreign Commerce Committee.

- ———. Report to accompany H. R. 9818. Feb. 11, 1916. 3 p. (H. rp. 173.) Paper, 5c.

Panama City. Protocol between United States and Panama, determination of amount of damages caused by riot at Panama City, July 4, 1914; signed Panama, Nov. 27, 1915. 5 p. (Treaty series, 620.) [Spanish and English.] State Dept.

Passports. Executive order requiring all persons leaving United States for foreign countries to be provided with passports of governments of which they are citizens. Dec. 15, 1915. 1 p. (No. 2288.) State Dept.

Peace, Commission for enduring peace. Hearings on H. R. 6921 and H. J. Res. 32. Statement of Jane Addams and others. Jan. 11, 1916. 17 p. Foreign Affairs Committee.

Peace propaganda investigation. Hearings on resolutions to investigate organizations which have been active in propaganda for or against proposed increases in Army and Navy. Jan. 19, 1916. 32 p. Rules Committee, House.

Peace, Treaties for advancement of, between United States and:

Chile, signed Washington, July 24, 1914, proclaimed Jan. 22, 1916. 7 p. (Treaty series 621.) [English and Spanish.] State Dept.

- Ecuador, signed Washington, Oct. 3, 1914; proclaimed Jan. 24, 1916. 7 p. (Treaty series 622). [English and Spanish. State Dept.
- ——. Agreements effected by exchanges of notes extending time for appointment of commissions under, between the United States and:

France, signed Nov. 10, 1915. (Treaty series 609A). State Dept. Great Britain, signed Nov. 3, 1915. (Treaty series 602A). State Dept.

Guatemala, signed Nov. 3, 1915. (Treaty series 598A). State Dept.

- Paraguay, signed Nov. 16 and 22, 1915. (Treaty series 614A.) State Dept.
- Portugal, signed Nov. 16, 1915. (Treaty series 600A). State Dept. Spain, signed Nov. 16 and Dec. 20, 1915. (Treaty series 605A.) State Dept.
- Sweden, signed Nov. 16, 1915. (Treaty series 607A.) State Dept. Philippine Islands, Future political status of. Report to accompany S. 381. Dec. 17, 1915. 3 p. (S. rp. 18.) Paper, 5c.
- ———. Hearings on S. 381 to declare purpose of United States as to future political status of the Philippine Islands. 1915. 95 p. *Philippines Committee*.
- ———. Government of. Letter from Secretary of War submitting report of Chief of Bureau of Insular Affairs upon his trip to the Philippines. Jan. 12, 1916. 51 p. (S. doc. 242.) Paper, 5c.
- Porto Rico, Civil government for. Hearings on H. R. 8501, Jan. 13 and 15, 1916. 44 p. Insular Affairs Committee.
- ———. Hearings on S. 1217. 1916. 102 p. Pacific Islands and Porto Rico Committee.

President of United States. Address delivered at joint session of two houses of Congress, Dec. 7, 1915. 18 p. Paper, 5c.

Radiotelegraphy, Important events in. Feb. 1, 1916. 25 p. Paper, 5c.

Trade-marks. British merchandise marks act, 1887, 50 and 51 Vict., ch. 28. 9 p. Interstate and Foreign Commerce Committee.

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTER-NATIONAL LAW

THE ROUMANIAN (CARGO EX)

Judicial Committee of the Privy Council. (Lord Mersey, Lord Parker of Waddington, Lord Sumner, Lord Parmoor, and Sir Edmund Barton)

Decided November 10, 1915

(The Times Law Reports, Vol. 32, p. 98)

This was an appeal from a judgment of the President of the Admiralty Division of the High Court in Prize delivered on December 7, 1914 (31 The Times L. R., 111).

Mr. Maurice Hill, K. C., Mr. R. H. Balloch, and Mr. C. R. Dunlop appeared for the appellants; Sir Edward Carson, K. C., Sir Erle Richards, K. C., and Mr. Theobald Mathew for the Crown.

Lord Parker, in delivering their Lordships' judgment, said:—This appeal relates to the cargo ex the steamship Roumanian, a British vessel. On August 4, 1914, the day on which war broke out between this country and Germany, she was on a voyage from Port Arthur (Texas) to Hamburg with some 6,264 tons of petroleum belonging to the Europäische Petroleum Union, a German company. On the same day the Admiralty, through the Secretary of Lloyds, suggested to the owners that the ship should be diverted to some port in the United Kingdom, and the owners accordingly instructed the master to go to Dartmouth for orders. The ship arrived at Dartmouth on August 14, 1914.

On August 15 the Board of Trade issued a notice containing recommendations with regard to the treatment of cargoes belonging to an enemy in ships diverted from their original ports of destination. These recommendations appear to their Lordships to be so conceived as to prejudice in no way the liability (if any) of such cargoes to be seized as prize. It was recommended that the cargo should be landed at a dock,

legal quay, or sufferance wharf, either in the port at which the steamer had arrived or in some other safe port, and warehoused subject to shipowners' and other charges until sale or disposal could be arranged for. If sold, the proceeds should be held for subsequent distribution to those entitled to the cargo, subject to shipowners' and other charges which might at law have priority to the claims of the persons entitled to the cargo or its proceeds. Obviously, if the cargo were liable to seizure as prize, seizure followed by condemnation in the Prize Court would entitle the Crown either to the cargo itself or the proceeds thereof, subject to such shipowners' or other charges as might, by law, take precedence of the Crown's interest.

On August 20 the Roumanian proceeded to London, arriving at Purfleet at noon on August 21. Before her arrival arrangements had been made to warehouse the petroleum in the tanks of the British Petroleum Company (Limited), and permission had been obtained from the custom house authorities for its discharge into these tanks. When so discharged the petroleum would be in the custody of the custom house authorities in the sense that it could not be removed without their sanction. The work of discharge accordingly began at 12.15 p. m. on August 21, the petroleum being pumped into the tanks, which were situated some 100 to 150 yards from the wharf at which the vessel lay. Meanwhile the custom house authorities took samples in order to test the specific gravity of the oil and ascertain whether it was dutiable.

About 7 p. m. on August 22 a letter from the custom house at Gravesend was delivered on board the *Roumanian*, addressed to the master, stating that the cargo of petroleum was placed under detention. This letter was not received by the master till 11 p. m. Roughly speaking, about 1,140 tons of oil remained undischarged at 7 p. m. and 570 tons at 11 p. m. on August 22. Notwithstanding the letter the work of discharging the oil continued. It was completed long before the writ in these proceedings, which did not issue until September 19, and was served by affixing it to the tanks in which the petroleum was then warehoused.

It will be observed that the letter giving notice of the detention of the cargo did not refer to its detention as prize, and it was argued on behalf of the appellants that there was no effectual seizure as prize until the writ was affixed to the tanks. It is clear, however, that the custom house is the proper authority to seize or detain, with a view to its condemnation as prize, any enemy property found in a British port. It is equally clear that the letter was intended to operate, and must have been understood by all concerned as intended to operate, as such a seizure. No other possible intention was suggested. In these circumstances their Lordships are of opinion that the cargo was effectually seized as prize upon the delivery of the letter. The point, however, is of little importance in the view which their Lordships take of the points of law, for if there was no seizure by delivery of the letter, there was admittedly a good seizure when the writ was served.

In these circumstances three points were raised by counsel for the appellants. They contended:

First, that so far as the petroleum was not affont at the date of seizure, the Prize Court had no jurisdiction;

Secondly, that even if the Prize Court had jurisdiction, it ought not to have condemned the petroleum so far as at the date of seizure it was warehoused in the tanks of the British Petroleum Company, and no longer on board the *Roumanian*; and,

Thirdly, that enemy goods in British ships at the beginning of hostilities either never were or, at any rate, have long ceased to be liable to seizure at all. Obviously, if the last point is correct, it is unnecessary to decide the first two points. Their Lordships, therefore, think it desirable to deal with it at once.

The contention that enemy goods in British ships at the beginning of hostilities are not the subject of maritime prize was not argued before the president in the present case. It had already been decided by him in The Miramichi (31 The Times L. R., 72; [1915] P., 71). Their Lordships have carefully considered the judgment of the president in that case and they entirely agree with it. The appellants' counsel based their contention on three arguments. First, they relied on the dearth of reported cases in which enemy goods in British ships at the beginning of hostilities have been condemned as prize, emphasizing the fact that in the case of The Juno (31 The Times L. R., 131) 3 no authority could be found for the right of the master of a British ship in which enemy goods were seized as prize to compensation in lieu of freight, though if such goods were properly the subject of prize, the question must constantly have arisen. Secondly, they laid stress on certain general statements contained in text-books on international law as to what enemy goods can now be seized as prize. Thirdly, they called

² Printed in this Journal for July, 1915, p. 739.

³ Ibid., p. 754.

in aid that part of the Declaration of Paris which affords protection to enemy goods other than contraband in neutral ships and the principle underlying or supposed to underlie such Declaration.

With regard to the dearth of reported decisions, it is to be observed. that the plainer a proposition of law, the more difficult it sometimes is to find a decision actually in point. Counsel are not in the habit of advancing arguments which they think untenable nor as a general rule do cases in which no point of law is raised and decided find their way Two law reports. If, on the one hand, it be difficult to find a case in which enemy goods in British ships at the beginning of hostilities have been condemned as prize, it is, on the other hand, quite certain that no case can be found in which such goods have been held immune from seizure. Further, inasmuch as by international comity British. prize courts have in general extended to neutrals the privileges enjoyed by British subjects, we should, if this contention be correct, expect to find that enemy goods in neutral ships at the beginning of hostilities were alike immune from seizure. Their Lordships have been unable to find any authority which gives color to this suggestion. There appears, indeed, to be no case in which for this purpose any distinction has been drawn between goods on board a neutral vessel at the outbreak of hostilities and goods embarked in a neutral vessel during the course of a war.

Their Lordships, therefore, are not impressed by the argument based on the dearth of actual decisions on the point. Moreover, the decisions, such as they are, certainly do not support but, indeed, contradict the appellants' contention. It is clear from the cases cited in *The Miramichi (supra)*, that enemy goods embarked in British ships during the hostilities are the subject of prize. See, in particular, *The Conqueror* (2 C. Rob., 303). In these cases the sole question decided has been the enemy character of the goods, and no stress has been laid on the time at which they were embarked, or on whether any person concerned had or had not been guilty of the common law offence of trading with the enemy. Further, there is the case of *The Venus*, referred to in Rothery's Prize Droits at p. 129.

Their Lordships have examined the papers preserved in the Record Office in connection with this case: *The Venus* was a British ship which at the outbreak of hostilities was on a voyage to Hamburg. Its cargo had been shipped at Genoa, Ancona, and Mentone. The master, hearing of the outbreak of war and desiring to avoid the risk of capture of

his ship by the enemy, put into Plymouth. The receiver of admiralty droits at Plymouth, suspecting on information given by the master that part of the cargo belonged to enemy subjects, seized both ship and cargo. The shipowners put in a claim for the release of the ship on the ground that it was British and also for freight expenses and demurrage. The ship was ordered to be released. The claim for freight and expenses was allowed, there being a reference to the proctor to ascertain the proper amount, which was declared a charge on the cargo. The claim for demurrage was disallowed. The amount to be allowed for freight and expenses was in due course certified by the proctor, and apparently paid out of the proceeds of the cargo which had been appraised and sold under the direction of the court. Parts of the cargo or its proceeds were subsequently claimed by and released in favor of neutrals. The residue of the cargo was condemned as the property of enemy subjects.

The case of *The Venus* (supra) appears therefore to be an authority against the appellants' contention. They say, truly, that the point does not seem to have been raised, but it is far more likely that the point was not raised because it was thought to be untenable than that the court overlooked what, according to the appellants' contention, must have been a well-known principle of prize law. Further, *The Venus* (supra) is certainly an authority in support of the president's decision in *The Juno* (supra). Curiously enough, the master of the *Venus*, though a British subject, is in the proctor's report in the last-mentioned case referred to as the "neutral master," a fact which is only consistent with the practice of the court in allowing freight being the same whether the enemy goods were seized in neutral or in British ships.

With regard to the general statements contained in text-books on international law, none of those cited in support of the appellants' contention appears to have been based on any discussion of the point in issue. They are for the most part based on a discussion of the effect of the Declaration of Paris. Their Lordships do not think that any useful purpose would be served by examining these statements in detail. They will take one example only, that cited from Westlake's International Law, Part II, p. 145. The author has been discussing the effect of the Declaration of Paris, and sums up as follows:

We may therefore conclude that enemy ships and enemy goods on board them are now by international law the only enemy property which as such is capturable at sea.

In their Lordships' opinion the meaning of such statements must be judged by the context. They cannot be taken apart from the context as intended to be an exhaustive definition of what is or is not now the subject of maritime prize. It might just as well be argued that because the writer in the present case uses the expression "capturable at sea," he must have thought that enemy goods in neutral ships lying in British ports or harbors were, notwithstanding the Declaration of Paris, still subject to capture.

Such statements are in any case more than counterbalanced by statements contained in other well-recognized authorities. Thus, in addition to the passages quoted in *The Miramichi (supra)*, from Dana's edition of Wheaton's International Law, it will be found that Halleck (International Law, Vol. III, p. 126) states that whatever bears the character of enemy property (with a few exceptions not material for the purpose of this case), if found upon the ocean or afloat in port, is liable to capture as a lawful prize by the opposite belligerent. It is the enemy character of the goods and not the nationality of the ship in which they are embarked or the date of embarkation which is the criterion of lawful prize. This is in full accordance with Lord Stowell's statement in *The Rebeckah* (1 C. Rob., 227), of the manner in which the order of 1665 defining admiralty droits has been construed by usage.

Passing to the appellants' third argument, that based on the Declaration of Paris or the principle supposed to underlie such Declaration, it may be stated more fully as follows: Enemy goods on neutral territory were never the legitimate subject of maritime prize. Such goods could not be seized without an infringement of the rights of neutrals. The rights of neutrals are similarly infringed if enemy goods be seized in neutral ships, but the law of prize having for the most part been formulated and laid down by nations capable of exercising and able to exercise the pressure of sea power, the rights of neutrals have been ignored to this extent, that the capture of enemy goods in neutral vessels on the high seas or in ports or harbors of the realm has been deemed lawful capture.

The Declaration of Paris is in fuller accordance with principle; it recognizes that no distinction can be drawn between neutral territory and neutral ships. To use Westlake's expression (p. 145, Int. Law, Part II), it assimilates neutral ships to neutral territory, recognizing that in both the authority of the neutral state ought (except possibly in the case of contraband) to be exclusive. So far, the argument pro-

ceeds logically, but its next step is, in their Lordships' opinion, open to considerable criticism. If, say the appellants, neutral ships are assimilated, as on principle they should be, to neutral territory, British ships ought to be in like manner assimilated to British territory. Whatever may have been the case in earlier times, no one will now contend that the private property of enemy subjects found within the realm at the beginning of a war can be seized and appropriated by the Crown. The same ought, therefore, to hold of enemy goods found in British ships at the beginning of war.

This part of the argument is, in their Lordships' opinion, quite fallacious. The Declaration of Paris, in effect, modified the rules of our prize courts for the benefit of neutrals. It was based on international comity, and was not intended to modify the law applicable to British ships or British subjects in cases where neutrals were not concerned. Its effect may possibly be summed up by saying that it assimilates neutral ships to neutral territory, but it is impossible to base on this assimilation any argument for the immunity of enemy goods in British ships.

The cases are not in pari materia. If the Crown has ceased to exercise its ancient rights to seize and appropriate the goods of enemy subjects on land, it is because the advantage to be thus gained has been small compared with the injury thereby entailed on private individuals, or in order to ensure similar treatment of British goods on enemy territory. But one of the greatest advantages of sea power is the ability to cripple an enemy's external trade, and for this reason the Crown's right to seize and appropriate enemy goods on the high seas or in territorial waters or the ports or harbors of the realm has never been allowed to fall into desuetude. In order to attain this advantage of sea power in the fullest degree our Courts have always upheld the right of seizing such goods even when in neutral bottoms, and neutrals have always admitted or acquiesced in the exercise of that right, either because it was deemed to be a legitimate exercise of sea power in time of war or because on some future occasion they themselves might be belligerents and desire to exercise a similar right on their own behalf.

Those who were responsible for the Declaration of Paris had not to weigh the advantage to be gained by the seizure of enemy goods in neutral ships against the injury thereby inflicted on private owners, but against the demands of international comity. The fact that we sacrificed on the alter of international comity a considerable part of the

advantages incident to power at sea is no legitimate reason for making a further sacrifice where no question of international comity can possibly arise.

Their Lordships hold, therefore, on this part of the case, that enemy goods in British ships, whether on board at the beginning of the hostilities or embarked during the hostilities, always were, and still are, liable to be seized as prize, either on the high seas or in the ports or harbors of the realm. It follows that the petroleum seized on board the *Roumanian* was properly condemned as prize.

The next point to be considered is the jurisdiction of the Prize Court so far as the petroleum was, when seized as prize, warehoused in the tanks of the British Petroleum Company, and no longer on board the Roumanian. The appellants contended that it is the local situation of the goods seized as prize which determines the jurisdiction of the Prize Court. If such goods be, at the time of seizure, on land and not afloat, it is not, they contended, the Prize Court but some court of common law which has jurisdiction to determine the rights of all parties interested. In their Lordships' opinion this contention also fails.

The chief function of a court of prize is to determine the question "prize or no prize," in other words, whether the goods seized as prize were lawfully so seized, so as to raise a title in the Crown. In determining this question, the local situation of the goods at the time of seizure may be of importance, but it is the seizure as prize, and not the local situation of the goods seized, which confers jurisdiction.

If authority be needed for this proposition, it may be found in Lord Mansfield's judgment in the case of Lindo v. Rodney, reported in a note to Le Caux v. Eden (2 Doug., p. 612). It must be remembered that the jurisdiction of the Prize Court is based in every case on a commission under the Great Seal. Lord Mansfield pointed out that, in the case before him, the commission under which the court derived jurisdiction conferred jurisdiction in all cases of prize, whether the goods sought to be condemned were taken on land or afloat. The same may be said of the commission in the present case. In his opinion, however, it was necessary to draw a distinction in this connection between the jurisdiction of the Court of Admiralty as a court of prize and its jurisdiction apart from the commission which constitutes it a court of prize.

To give the Court of Admiralty as such jurisdiction, the matter complained of must have occurred on the high seas, but in all matters of prize it was not the Court of Admiralty as such, but the Court of Admiralty by virtue of the commission which had jurisdiction, and this jurisdiction was exclusive, whether the goods seized as prize were on land or affoat. The only authority which, at first sight, appears to be in conflict with Lord Mansfield's decision is the case of *The Ooster Eems* (1 C. Rob., 284n.), to which no great weight can be given.

Their Lordships will now proceed to consider the appellants' contention that even if the Prize Court had jurisdiction it ought nevertheless to have decided against the condemnation of the petroleum so far as it was not actually afloat in the *Roumanian* at the time of seizure. They admitted that during the war no order for restitution or release could properly be made in favor of the German owners, but they suggested that the proper course was to hand the petroleum over to the public trustee or some other official for safe custody until the restoration of peace. No case where any such course has been pursued was cited.

The real question is whether the petroleum is, according to the law administered by prize courts in this country, properly the subject of maritime prize, although locally situated on shore. All enemy ships and cargoes which may, after the outbreak of the war, be found affoat on the high seas or in territorial waters or in the ports or harbors of the realm are liable to seizure as maritime prize. The petroleum was undoubtedly enemy property. It was undoubtedly on the high seas at and after the declaration of war. It became liable to seizure as prize as soon as war was declared. It did not cease to be so liable by being carried into Dartmouth or thence to Purfleet. It clearly remained so liable while still afloat. Did it cease to be so liable when pumped into the tanks of the British Petroleum Company? No satisfactory reason why it should cease to be so liable was suggested, and their Lordships have been unable to discover one for themselves. The argument of counsel was based on the assumption that no enemy goods not actually afloat at the time of seizure could be lawfully seized as prize, unless possibly they could be considered as locally situate within a port or harbor, and that the tanks of the British Petroleum Company (Limited) could not be considered as part of the Port of London. their Lordships' opinion, no ground for this assumption. The test of ashore or afloat is no infallible test whether goods can or cannot be lawfully seized as maritime prize. It is perfectly clear, for instance, that enemy goods seized on enemy territory by the naval forces of the Crown may lawfully be condemned as prize. The same is true of goods seized by persons holding letters of marque, and even of goods seized by

persons having no authority whatever on behalf of the Crown, when the Crown subsequently ratifies the seizure. This is clear from the case of Brown and Burton v. Franklyn (Carth., 474), quoted in the judgment of Mr. Justice Buller in Le Caux v. Eden (supra). Brown and Burton, the masters of a vessel belonging to the East India Company, seized enemy goods on land. They had no letters of marque. The King's Proctor instituted proceedings in the Prize Court, and having obtained a condemnation of the property as prize proceeded against Brown and Burton for an account. The latter instituted proceedings at common law for a prohibition on the ground that the goods taken were on land, but relief was refused. Moreover, Lord Mansfield, in Lindo v. Rodney (supra), expressly approves of an admission made by counsel in that case to the effect that it would be "spinning very nicely". to contend that if the enemy left their ship and got on shore with money and were followed on land and stripped of their money this would not be a lawful maritime prize. If this be, as it seems to their Lordships to be, good law, the present is an a fortiori case. In the case put by counsel the landing of the goods was made by the enemy with the object of escaping capture afloat. In the present case such landing was by British subjects who had the enemy goods in their possession and did not know what else to do with them, and were pursuing a course recommended by the Board of Trade, and in no way intended to prejudice the Crown's rights.

With regard to the authorities quoted in this connection they have, in their Lordships' opinion, with one possible exception, no real bearing on the point. In The Hoffnung (No. 3) (1 Eng. Prize Cases, 583), the cargo seized on shore had been landed and sold prior to the declaration of war. These goods, therefore, even if enemy goods at all, were never liable to seizure as prize. They were not, in fact, seized, nor was any proceeding taken against them, but an attempt was made to recover against the ship which had brought them the value of the goods so sold, the ship itself belonging to a neutral. This claim was rejected by the court. It was held that unless it could be shown that the hand of capture had been employed on these goods in quality of cargo the court could not go back to affect them in any other character. The same principle was recognized in *The Charlotte* (1 Eng. Prize Cases, 585, note) in which it was held that the proceeds of goods landed and sold before the seizure of the ship, and never themselves seized, were not amenable to the jurisdiction of the court.

In Brown v. The United States (8 Cranch, 110), it was decided on the facts that the goods in question were in the position of enemy goods found on American soil at the beginning of the hostilities and not, therefore, the subject of maritime prize. That case, therefore, is clearly distinguishable from the present. The only case which raises any difficulty is that of The Ooster Eems (supra). There is no satisfactory report of this case. It is mentioned in the note on p. 284 of 1 C. Rob. and in the preface to Hay and Marriott's Decisions, p. xxvii. Their Lordships have, however, examined the papers relating to it preserved in the Record Office. The Ooster Eems was a Prussian and therefore a neutral vessel. It was stranded on the Goodwin Sands on a voyage from Texel to the East Indies. Before it broke up, part of its cargo was sent ashore including some boxes of silver coin. The latter were deposited by the master with the Prussian Consul at Deal.

One Jeremiah Hartley, an officer of the Court of the Cinque Ports, acting under an order of attachment issued by such court sitting as an Admiralty Court, seized and obtained possession of the goods so landed, including the boxes of silver, on behalf of the warden of the Cinque Ports. The seizure may have been intended to be a seizure of enemy goods as maritime prize, though their Lordships have been unable to ascertain that the Court of the Cinque Ports had any jurisdiction in prize. The warden took no proceedings either in his own or any other court with a view to having the goods lawfully condemned. The master, therefore, obtained from the High Court of Admiralty in England a monition requiring Jeremiah Hartley and the Warden and all others whom it might concern to appear and proceed to the legal adjudication in that court whether the goods seized were lawful prize or not.

The King's Proctor subsequently intervened. Certain depositions were filed which appear to raise some suspicion that the goods were Dutch and therefore enemy goods, but there was no real evidence to that effect. The master deposed that he did not know to whom the goods belonged, and in these circumstances one would have expected that the court would have acted on the presumption arising from the fact that the ship was a neutral ship. The court, however, made an interlocutory decree condemning the goods on the ground that the goods which apparently were assumed to be enemy goods were not at the time of seizure "in a privileged vehicle or on neutral territory."

All questions between the Crown and the warden were reserved. The master appealed to the Lords Commissioners of Appeal in Prize, and on such appeal the order for condemnation was discharged, not on the merits but, in the words of the Privy Council Journals, on the ground that: "The High Court of Admiralty in England, the court appealed from, had not a jurisdiction over the goods seized and proceeded against in this cause."

The records of the Privy Council do not contain any note of the reasons which led to this decision. It would appear, however, from the case of *The Two Friends* (1 C. Rob., 271), that Lord Stowell had before him some note of these reasons, for he represents Lord Thurlow as saying that: "Those goods had never been taken on the high seas, they had only passed in the way of civil bailment, on delivery into civil hands; and were afterwards arrested on shore as prize."

If this be correct it may mean that in the opinion of the Lords Commissioners it is the local situation of the goods seized as prize, and not the seizure as prize which determines the jurisdiction of the prize court, a decision diametrically opposed to the judgment of Lord Mansfield in Lindo v. Rodney (supra), which had been pronounced only three years previously. On the other hand, it may mean that the goods were not liable to seizure as prize because they were not on the high seas but on land, in which case Lord Thurlow was deciding the very point which he held the Court of Admiralty had no jurisdiction to decide, and he ought to have ordered the restitution of the goods to the master instead of leaving that somewhat hardly-used individual to his remedies at common law, in the assertion of which he would have in some way or other to get over Lord Mansfield's judgment to the effect that the question of prize or no prize could only be determined in a prize court.

Moreover, it is almost impossible to suppose, in the then state of the authorities, that Lord Thurlow thought that to constitute lawful prize the seizure must have been on the high seas. It was already well settled that enemy ships and goods in the ports or harbors of the realm were the subject of maritime prize. It was equally well settled that enemy goods on enemy territory seized by the maritime forces of the Crown, or persons having letters of marque, could properly be condemned as prize. If, therefore, he used the expressions attributed to him by Lord Stowell some other explanation must be found.

In their Lordships' opinion a reasonable explanation of the case and of Lord Thurlow's words may be found in the following consideration. It appears that the Court of the Cinque Ports in its capacity as an admiralty court had taken possession of the goods at the instance of the

Lord Warden. There was, therefore, a matter pending in the Cinque Ports which, so far as their Lordships can discover, was not a court of prize. The effect of the monition was to remove this matter to the High Court of Admiralty for trial there. In so trying it the High Court would be exercising an admiralty and not a prize jurisdiction. As appears by Lord Mansfield's judgment in Lindo v. Rodney (supra), in order to found an admiralty jurisdiction the complaint must be made of something done on the high seas. This explanation would fully account for the words used by Lord Thurlow, though it must be admitted that Lord Stowell took a different view as to what he meant.

In any event their Lordships do not consider that *The Ooster Eems* (supra) has any value as an authority. It has never been followed, and, apparently, has been cited twice only, and in each case distinguished. It is so cited and distinguished in *The Two Friends* (supra) and also in *The Progress* (Edwards's Admiralty Reports, 210).

In the last mentioned case certain British ships with their cargoes had been captured by the French. It is not clear whether they were captured at sea and taken into Oporto after the French occupation, or whether the French found them in the harbor of Oporto when they took possession of it. The French appear to have landed part of the cargoes which was warehoused on shore at the time when the military forces of the Crown took Oporto. It was, however, held upon the facts that there had been a capture by the French and a recapture by the military forces of the Crown of both ships and cargoes.

Lord Stowell allowed a claim for salvage on the part of the military authorities in respect of that portion of the cargoes which had been landed as well as of the ships and that portion of the cargoes remaining on board. He distinguished The Ooster Eems (supra) on the ground, as their Lordships understand the decision, that the master of The Ooster Eems, in landing the goods, was acting within his authority derived from the owners of the goods, whereas the landing in the case he was considering had been effected by persons acting without authority from and contrary to the interests of the owners. The same ground of distinction would appear to be applicable to the case their Lordships are considering. The petroleum was not warehoused pursuant to any authority given by the owners, but in breach of the contract for its carriage to Hamburg, and so far as the owners were concerned this was as much a hostile act as the landing of the goods by the enemy captors in the case of The Progress (supra). In neither case, to use

Lord Stowell's expression, was the continuity of the character of the goods landed as cargo in any way interrupted.

There are only two other cases which need to be referred to in this connection. The first is that of *The Marie Anne*, cited in Rotherby's Prize Droits at p. 126.

In this case, at the outbreak of the war with France on May 16, 1803, The Marie Anne, a French ship, was under repair at Ramsgate, and certain parts of her cargo had been landed and were warehoused. Both the ship and the goods so landed were seized as prize, and in due course condemned as such. There is no record of the reasons which influenced the court. It may be that the warehouses in which the goods were deposited were considered as part of a harbor or port of the realm, so as to bring the case within the ordinary definition of goods liable to seizure as prize. It may be that the goods, having been temporarily landed while the vessel was repaired, were still considered as part of the cargo though not actually on board. The case, however, is clearly inconsistent with the proposition that goods seized on land cannot be lawful prize. The same may be said of the case of The Berlin Johannes (Rothery, p. 125), if, as would appear to be the case, the goods already landed were seized and condemned as prize.

If these decisions turned on the question whether the goods though landed were still in port they are authorities against the appellants, for no valid distinction can be suggested between a warehouse for the receipt of goods brought into harbor by sea and the tanks in which, in the present case, the petroleum was stored.

Their Lordships, therefore, have come to the conclusion that the petroleum on board the *Roumanian*, having from the time of the declaration of the war onwards been liable to seizure as prize, did not cease to be so liable merely because the owners of the vessel, not being able to fulfil their contract for delivery at Hamburg, pumped it into the tanks of the British Petroleum Company for safe custody, and that therefore its seizure as prize was lawful. They see no reason to dissent from the judgment of the president to the effect that these tanks constituted part of the Port of London for the purpose of applying the rule relating to the liability to seizure of enemy's goods in the ports and harbors of the realm, but it is unnecessary to decide this point.

For the reasons hereinbefore appearing their Lordships are of opinion that the appeal should be dismissed, and they will humbly advise his Majesty accordingly.

THE ODESSA (CARGO EX). THE WOOLSTON (CARGO EX)

Judicial Committee of the Privy Council. (Lord Mersey, Lord Parker of Waddington, Lord Sumner, Lord Parmoor, and Sir Edmund Barton)

Decided November 11, 1915

(The Times Law Reports, Vol. 32, p. 103)

These were appeals from decrees of the President of the Admiralty Division of the High Court in Prize delivered on December 21, 1914, and March 16, 1915. The President's decision in *The Odessa* (Cargo Ex) is reported in 31 *The Times* L. R. 148; [1915] p. 52.¹

Sir Robert Finlay, K. C., Mr. F. D. MacKinnon, K. C., and Mr. C. R. Dunlop appeared for the appellants; Sir Edward Carson, K. C., Mr. Maurice Hill, K. C., Mr. Theobald Mathew, and Mr. T. H. T. Case for the Crown.

Lord Mersey in delivering judgment said: There is very much in common in the points arising in both cases, but as the facts and arguments are not identical it is desirable to consider each case separately.

THE CARGO EX ODESSA

The facts in this case are: The appellants, Messrs. J. H. Schröder and Co., are bankers carrying on business in London. The partners are Baron Bruno von Schröder, a naturalized British subject, and Frank Tiarks, a natural born British subject. In the ordinary course of their business the appellants had in March, 1914, agreed with a German company in Hamburg called the Rhederei Actien Gesellschaft von 1896 to accept the drafts of Weber and Co., a firm in Chile, for the price of a quantity of nitrate of soda to be sold and shipped by Weber and Co. to the German company. The drafts were to be drawn at 90 days' sight, and the appellants, upon acceptance of them, were to receive by way of security the bill of lading for the cargo, together with a policy of marine insurance. The consideration for this accommodation was to be a commission of one-quarter per cent. payable by the German company to the appellants. In due course Weber and Co. shipped a cargo of nitrate on board a sailing ship called the Odessa, belonging to

¹ Printed in this JOURNAL for July, 1915, p. 754.

the German company, and took from the captain a bill of lading dated May 8, 1914, in which the voyage was described as from Mejillones (the port of shipment in Chile) to the "Channel for orders," and by which the cargo was made deliverable to the appellants or their assigns. This bill of lading incorporated the terms of a charter-party (of which there is no copy), and made the chartered freight payable by the consignees upon delivery of the cargo.

Drafts for a total amount of £41,153 1s. 5d. (said to be the full price of the cargo) were drawn by Weber and Co. upon the appellants, and accepted by them on June 9, 1914, in exchange for the bill of lading. War broke out between Great Britain and Germany on August 4, 1914, the Odessa being then on her voyage to the Channel. On the 19th the ship was captured on the high seas by H. M. S. Caronia and brought into Bantry Bay, and on the 31st a writ was issued against ship and cargo at the suit of the Procurator-General claiming condemnation of both as lawful prize.

On September 10 the drafts of Weber and Co. fell due, and were paid by the appellants. The ship was duly condemned, and no question arises with reference to her condemnation, but in respect of the cargo the appellants intervened, and by their claim alleged it to be their property as holders for full value of the bill of lading therefor and as British property not liable to condemnation. The learned president condemned the cargo on the ground that the general property was in the German company at the date of the seizure, and that the appellants were merely pledgees, and as such not entitled to any precedence over the Crown.

Their Lordships are of opinion that the learned president was right in the inferences which he drew from the facts—namely, that the general property in the cargo was in the German company, and that the appellants were merely pledgees of it at the date of the seizure. This indeed is hardly disputable, having regard to the case of Sewell v. Burdick (1 The Times L. R. 128; 10 App. Cas. 74). The property vested in the company upon the ascertainment of the goods at Mejillones, and the pledge was perfected when the appellants accepted the drafts and received the bill of lading. The appellants indeed did not dispute the correctness of these inferences, but what they say is that, though correct, they do not justify a decree which has the effect of forfeiting their rights as pledgees. Thus the question in the appeal is whether in case of a pledge such as existed here a court of prize ought to condemn the

cargo, and, if so, whether it should direct the appellants' claim to be paid out of the proceeds to arise from the sale thereof.

It is worth while to recall generally the principles which have hitherto guided British courts of prize in dealing with a claim by a captor for condemnation. All civilized nations up to the present time have recognized the right of a belligerent to seize with a view to condemnation by a competent court of prize enemy ships found on the high seas, or in the belligerents' territorial waters, and enemy cargoes. But such seizure does not, according to British prize law, affect the ownership of the thing seized. Before that can happen the thing seized, be it ship or goods, must be brought into the possession of a lawfully-constituted court of prize, and the captor must then ask for and obtain its condemnation as prize. The suit may be initiated by the representative of the capturing state, in this country by the Procurator-General. It is a suit in rem, and the function of the court is to inquire into the national character of the thing seized. If it is found to be of enemy character the duty of the court is to condemn it; if not, then to restore it to those entitled to its possession. The question of national character is made to depend on the ownership at the date of seizure, and is to be determined by evidence. The effect of condemnation is to divest the enemy subject of his ownership as from the date of the seizure, and to transfer it as from that date to the sovereign or to his grantees. The thing—the res—is then his for him to deal with as he thinks fit, and the proceeding is at an end.

As the right to seize is universally recognized so also is the title which the judgment of the court creates. The judgment is of international force, and it is because of this circumstance that courts of prize have always been guided by general principles of law capable of universal acceptance rather than by considerations of special rules of municipal law. Thus it has come about that in determining the national character of the thing seized the courts in this country have taken ownership as the criterion, meaning by ownership the property or dominium as opposed to any special rights created by contracts or dealings between individuals, without considering whether these special rights are or are not, according to the municipal law applicable to the case, proprietary rights or otherwise. The rule by which ownership is taken as the criterion is not a mere rule of practice or convenience; it is not a rule of thumb. It lays down a test capable of universal application, and therefore peculiarly appropriate to questions with which a court of prize has

to deal. It is a rule not complicated by considerations of the effect of the numerous interests which under different systems of jurisprudence may be acquired by individuals either in or in relation to chattels. All the world knows what ownership is, and that it is not lost by the creation of a security upon the thing owned. If in each case the court of prize had to investigate the municipal law of a foreign country in order to ascertain the various rights and interests of every one who might claim to be directly or indirectly interested in the vessel or goods seized, and if in addition it had to investigate the particular facts of each case (as to which it would have few, if any, means of learning the truth), the court would be subject to a burden which it could not well discharge.

There is a further reason for the adoption of the rule. If special rights of property created by the enemy owner were recognized in a court of prize, it would be easy for such owner to protect his own interests upon shipment of the goods to or from the ports of his own country. He might, for example, in every case borrow on the security of the goods an amount approximating to their value from a neutral lender and create in favor of such lender a charge or lien or mortgage on the goods in question. He would thus stand to lose nothing in the transaction, for the proceeds of the goods if captured would, if recovered by the lender, have to be applied by him in discharge of his debt. Again, if a neutral pledgee were allowed to use the prize court as a means of obtaining payment of his debt instead of being left to recover it in the enemy's courts, the door would be opened to the enemy for obtaining fresh banking credit for his trade, to the great injury of the captor belligerent.

Acting upon the principle of this rule, courts of prize in this country have, from before the days of Lord Stowell, refused to recognize or give effect to any right in the nature of a "special" property or interest or any mortgage or contractual lien created by the enemy whose vessel or goods have been seized. Liens arising otherwise than by contract stand on a different footing and involve different considerations; but even as to these it is doubtful whether the court will give effect to them. Where the goods have been increased in value by the services which give rise to the possessory lien, it appears to have been the practice of the court to make an equitable allowance to the national or neutral lienholder in respect of such services. In the judgment in *The Frances* (8 Cranch, 418), speaking of freight, it is said:

On the one hand the captor, by stepping into the shoes of the enemy owner of the goods, is personally benefited by the labor of a friend, and ought, in justice, to make

him proper compensation: and on the other, the shipowner, by not having carried the goods to the place of their destination, and this in consequence of the act of the captor, would be totally without remedy to recover his freight against the owner of the goods.

It, however, is unnecessary to deal with the question of liens arising apart from contract, the present case being one of pledge founded on a contract made with the enemy.

When the authorities are examined it will be found that they bear out the view that enemy ownership is the true criterion of the liability to condemnation. The case of The Tobago (5 Ch. Rob., 218) is in point. There the claimant was a British subject. In time of peace he had honestly advanced money to a French shipowner to enable the latter to repair his ship, which was disabled, and by way of security he had taken from the owner a bottomry bond. Afterwards war broke out with France and the vessel was captured. In the proceedings in the Prize Court for condemnation the holder of the bottomry bond asked that his security might be protected, but Lord Stowell, after observing that the contract of bottomry was one which the Admiralty Court regarded with great attention and tenderness, went on to ask: "But can the court recognize bonds of this kind as titles of property, so as to give persons a right to stand in judgment, and demand restitution of such interests in a court of prize?" And he states that it had never been the practice to do so. He points out that a bottomry bond works no change of property in the vessel, and says:

If there is no change of property, there can be no change of national character. Those lending money on such security, take this security subject to all the chances incident to it, and amongst the rest, the chances of war.

The decision in *The Mary* (9 Cranch, 126) is to the same effect. Similarly, in *The Aina* (1 Spinks's Prize Cases, 8) the court refused to recognize or give effect to a mortgage on the ship captured, and the same point arose and was similarly decided in *The Hampton* (5 Wall., 372). Again, in *The Battle* (6 Wall., 498) the court refused to recognize a maritime lien for necessaries, a decision which was followed in *The Rossia* (2 Russ. and Jap. Prize Cases, 43). *The Ariel* (11 Moo. P. C., 119) was the converse case of an attempt to obtain condemnation, not of enemy goods, but an enemy lien on goods; it failed on the same principle. In that case Sir John Patteson said: "Liens, whether in favor of a neutral on an enemy's ship, or in favor of an enemy on a neutral ship, are equally to

be disregarded in a court of prize." All these cases were fully discussed by the President in *The Marie Glaeser* (31 *The Times L. R.*, 8; [1914] P. 218).²

Passing to cases which more resemble the present case, there is The Marianna (6 C. Rob., 24), in which the court refused to give effect to a contract of pledge on goods consigned to the agent of the pledgee. "Captors," says Sir W. Scott in that case, "are supposed to lay their hands on the gross tangible property, on which there may be many just claims outstanding, between other parties, which can have no operation as to them. If such a rule did not exist, it would be guite impossible for captors to know upon what grounds they were proceeding to make any The doctrine of liens depends very much on the particular rules of jurisprudence which prevail in different countries. To decide judicially on such claims would require of the court a perfect knowledge of the law of covenant, and the application of that law in all countries, under all the diversities in which that law exists. From necessity, therefore, the court would be obliged to shut the door against such discussions and to decide on the simple title of property, with scarcely any exceptions." There is The Frances (8 Cranch, 418), in which the court refused to recognize or give effect to the rights of a consignee under the bill of lading for advances against the goods to which the bill of lading related. In that case the court laid it down that

In cases of liens created by the mere private contract of individuals, depending upon the different laws of different countries, the difficulties which an examination of such claims would impose upon the captors, and even upon the prize courts, in deciding upon them, and the door which such a doctrine would open to collusion between the enemy owners of the property and neutral claimants, have excluded such cases from the consideration of those courts.

There is another American case, *The Carlos F. Roses* (177 U. S. Rep., 655), in which the claim put forward by a neutral who had advanced money upon a cargo on a captured ship and who had received bills of lading covering the shipment was rejected.

It is difficult to distinguish the facts in any of the three cases last mentioned from the facts of the present claim by Messrs. Schröder and Co. Some stress was laid by the appellants upon the dissenting judgments in *The Carlos F. Roses* (supra), but a perusal of these judgments will show that they proceeded upon the assumption that in the circum-

² Printed in this JOURNAL for April, 1915, p. 531.

stances the general property in the goods had passed to the holder of the bills of lading. The case was decided before the judgment in Sewell v. Burdick (supra). Finally, The Hampton (5 Wall., 372) is a case in which the claim of a mortgagee on a ship was rejected.

Before adverting to the arguments by which the appellants seek to displace this weight of authority it is necessary to deal with a contention put forward by them that by their title as pledgees they are clothed with a sufficient ownership to bring their case within the rule. This contention is based upon the right of sale accorded to a pledgee by the law of England, by which, in the event of default by the pledgor in payment of his debt, the pledgee can sell the pledge without first having recourse to a court of law for authority to do so. This right, it is said, creates a "special" property in the pledge in favor of the pledgee and is a right in re constituting or equivalent to ownership and distinguishable in character from the mere right in rem possessed by a lien holder. It is first to be observed of this right to sell without recourse to a court of law that it is peculiar to the English law of pledge. It is thus precisely one of those matters which a prize court should leave out of consideration when applying to its decision general principles common to all systems of law to the exclusion of principles of municipal law.

The subject was very fully examined by Chancellor Kent in Lord Stowell's time in 1805, in a learned judgment declaring the decision of the Supreme Court of the State of New York (Cortelyou v. Lansing, 2 Cairnes' Cases in Error, p. 202): "I believe," he says, "that there is no country at present, unless it be England, that allows a pledge to be sold but in pursuance of a judicial sentence."

Secondly, it is to be observed that if the right clothes the pledgees with ownership, it precludes the court from making any decree at all of condemnation. The ownership by which a court of prize is guided cannot subsist both in the pledgees and in the pledgers.

If it exists in the appellants in the present case no decree can be made against them, for they are British subjects, and the interest left in the enemy subject cannot be condemned, for ex hypothesi it is not an interest which includes ownership. See The Ariel (11 Moo. P. C., 119) in which it was laid down that as a court of prize ignores a lien in favor of a neutral on an enemy's ship, so will it ignore a lien in favor of an enemy on a neutral ship. But when the nature of the right of a pledgee to sell is examined it will be seen that the so-called "special" property which it is said to create is in truth no property at all. This has been recog-

nized by many judges who have used the expression "special interest" as a substitute for "special property." See Mores v. Conham (Owen, 123; 7 Jac. 1) and Donald v. Suckling (L. R., 1 Q. B., at p. 613).

If it were not for the somewhat unfortunate peculiarity of English terminology involved in the established use of the words "special property" when "special interest" would seem better, it is difficult to see how an argument could be maintained which would effectively distinguish pledge from lien for present purposes.

The very expression "special property" seems to exclude the notion of that general property which is the badge of ownership. If the pledgee sells he does so by virtue and to the extent of the pledgor's ownership, and not with a new title of his own. He must appropriate the proceeds of the sale to the payment of the pledgor's debt, for the money resulting from the sale is the pledgor's money to be so applied. The pledgee must account to the pledgor for any surplus after paying the debt. He must take care that the sale is a provident sale, and if the goods are in bulk he must not sell more than is reasonably sufficient to pay off the debt, for he only holds possession for the purpose of securing himself the advance which he has made. He cannot use the goods as his own. These considerations show that the right of sale is exercisable by virtue of an implied authority from the pledgor and for the benefit of both parties. It creates no jus in re in favor of the pledgee; it gives him no more than a jus in rem such as a lien holder possesses, but with this added incident, that he can sell the property motu proprio and without any assistance from the court.

Returning to the authorities, the appellants attempt to displace them in the following way. They say, in the first place, that Lord Stowell, in *The Tobago* (supra), was referring only to "secret" liens, which they interpret to mean liens not appearing on the ship's papers, and they contend that theirs was not secret for that it appears on the ship's papers, namely, on the face of the bills of lading. But when the judgment in *The Tobago* (supra) is examined it will be found that Lord Stowell used the term "secret liens" as equivalent to liens created by the act of the parties as opposed to those arising under the general law merchant. Further, it cannot in the present case be said with any truth that Messrs. Schröder's lien is disclosed on the ship's papers. It is true that the bill of lading was made out in favor of them or their assigns, but this is quite consistent with their having no charge at all, and the consignment having been made to them merely as the factors or

agents of the enemy owners. The contract of pledge under which alone their claim arises, however probable in the ordinary course of commerce, is nowhere disclosed in the ship's papers. Again, such as it was, the disclosure was certainly no more than existed in the cases of *The Marianna* (supra), The Frances (supra), and The Carlos F. Roses (supra).

Secondly, the appellants contend that being by virtue of the bill of lading in possession of the goods there can be no reason in principle why the court should not recognize an interest arising out of such possession, just as it recognizes the carrier's possessory lien for freight. But such possession as the appellants had is not an actual possession such as forms the basis of a possessory lien at common law, but merely such possession as according to the law relating to pledge arises out of constructive or symbolical deilvery. There is not, to use the words of Lord Stowell in *The Tobago (supra)*, that "interest directly and visibly residing in the substance of the thing itself" which is to be found in the actual possession held by a carrier. Further, it will be found that a possession, similar in character to that which Messrs. Schröder had, existed in several of the cases already referred to on the part of lien holders whose claims were rejected by the court.

Thirdly, the court was asked to accept the suggestion that the practice of making advances on the security of bills of lading had arisen after the decisions referred to had been pronounced and that in the interest of commerce the adverse decisions should now be disregarded. With regard to this argument, it is to be observed that at any rate The Carlos F. Roses (supra) was decided at a time when the practice referred to was well known, and although the decision cannot bind an English court, still the considered judgment of the Supreme Court of the United States is entitled to the greatest possible weight. Further, it is difficult to see how any change—if there has been any change—in commercial practice invalidates the reasons which led to the decisions in question.

Lastly, the appellants urged that if the court now applies the principles illustrated by the cases referred to above, very serious injustice will be done to and serious loss incurred by neutrals or subjects who, before the war and in the normal course of business, have made advances against bills of lading. It is to be observed that similar injustice and loss, though possibly on a less extensive scale, must have been caused by the application of the same rules in the 18th and early 19th centuries, and similar arguments were in fact addressed to Lord Stowell as a reason why they should not be applied in individual cases. The reason why

such arguments cannot be sustained is fairly obvious. War must in its very nature work hardship to individuals, and in laying down rules to be applied internationally to circumstances arising out of a state of war it would be impossible to avoid it. All that can be done is to lay down rules which, if applied generally by civilized nations, will, without interfering with the belligerent right of capture, avoid as far as may be any loss to innocent parties. It is precisely because the recognition of liens or other rights arising out of private contracts would so seriously interfere with the belligerent right of capture that the courts have refused to recognize such liens or rights in spite of the hardship which might be caused to individuals from such want of recognition.

It is said that in Lord Stowell's time there was a possibility of redressing any individual hardship which might be caused to neutral or subject by an appeal to the bounty of the Crown, and that in some way or other the Crown has lost its power of bounty in the matter. It is true that Lord Stowell, when pressed with the individual hardship of decisions he was about to pronounce, sometimes referred to the fact that any apparent injustice might be met by an exercise of the Crown's bounty. (See The Belvidere, 1 Dods., 353; and The Constantia Harlessen, Edwards, Adm., 232.) Whether his judgments were in any way based on that consideration or whether they would not have been the same if the possibility of the exercise of the Crown's bounty had not existed is an arguable point. In their Lordships' opinion, however, it is unnecessary to decide this point, for after hearing the Attorney-General they have come to the conclusion not only that the Crown had and was accustomed to exercise a power of bounty by way of redress of hardships, but that such power still exists unimpaired.

Perhaps the most notable instance of the exercise of such power was the Order in Council made at the beginning of the war with Denmark in 1807. It was thereby ordered that in case any advances should have been made before the then late embargo (viz., September 2 then last passed) by any British subject upon the credit and security of any ship, freight, or goods belonging to Danish subjects which might be condemned as prize to his Majesty, the amount of such advances so actually made (but without further compensation) should be paid to the British subjects out of the proceeds of the property so condemned upon the credit of which the advances were respectively made upon due proof thereof to the satisfaction of the High Court of Admiralty.

If the Crown could order this generally, it must also have had the

power to order it in particular instances. Further, if it could make such an order in favor of British subjects, it must also have had the power to make it in favor of neutrals, and circumstances can easily be imagined in which the exercise of such a power in favor of neutrals might as a matter of policy be deemed desirable.

[The examination by the Privy Council of the Acts of Parliament upon which the Attorney General relied in his argument that the Crown's prerogative of bounty had ceased to exist, is omitted from the JOURNAL.—Ed.]

Their Lordships, therefore, hold that the power in question still exists. They desire, however, to state that they express no opinion whether the present case is one in which the power ought to be exercised.

There were two other points suggested in argument which deserve some consideration. First, it was said that the difficulty of recognizing liens on captured enemy goods might be less in the case of a lien holder's being a subject than in the case of his being a neutral. In the case of a neutral it is obvious that the payment of the lien out of the proceeds of a sale of the goods would enure directly to the benefit of the enemy. The enemy debt would thus be paid at the expense of the captors instead of the neutral's being left to recover it in the enemy courts. A right of capture at sea would thus be deprived of its national advantage. On the other hand, if the lien holder be a subject his right of proceeding in the enemy courts is, if not lost, at any rate suspended by the existence of a state of war. If the right be lost the recognition of the lien would not, it is said, enure to the advantage of the alien enemy but merely to one of his Majesty's subjects. If the right be merely suspended it could not enure to the advantage of the alien enemy, at any rate until after the war, and the court, it is said, should only consider the existing state of war and not be guided by what will happen when the war is over.

There may be some force in these considerations, but, on the other hand, it is to be remembered that by international comity the courts of prize in this country have, in general, extended to neutrals the same advantages as they afford to his Majesty's subjects, and it would be difficult to make an exception. Moreover, both in the case of a neutral and of a subject the lien holder may have in his hands assets belonging to the enemy to which he can have recourse for the payment of his debt; and into such a matter the courts have no means of inquiring.

The second suggestion does not involve the same difficulty. It is that the rules laid down in the cases referred to should be confined to transactions originating during the war, and that liens created bona fide before the war began might well be recognized whether held by subjects or neutrals. There is, however, no authority for such a distinction, indeed authority is the other way (see *The Tobago*, supra). Neither of the above suggestions was seriously pressed on their Lordships, nor could either of them be accepted.

Their Lordships will humbly advise his Majesty that the appeal should be dismissed.

THE CARGO EX WOOLSTON

The above judgment in the case of the cargo ex Odessa applies equally in the case of the cargo ex the steamship Woolston. The only difference between the two cases is that the Odessa was an enemy ship and the Woolston was a British ship. Their Lordships are of opinion that enemy goods on board both British and neutral ships at the beginning of hostilities are alike the proper subject of maritime prize. The point has been more fully dealt with in the judgment in the case of The Roumanian (32 The Times L. R., 98). The fact that the Woolston was a British ship can therefore have no importance, unless it be necessary for the court to act on some presumption arising from the character of the ship. It is unnecessary to act on any such presumption where, as in the present case, the whole facts are in evidence and the enemy character of the cargo is fully established.

In this case, also, their Lordships will humbly advise his Majesty that the appeal should be dismissed.

PART CARGO EX SS. ZAMORA

Judicial Committee of the Privy Council

(The Times Law Report, April 7, 1916)

(Present—Lord Parker, Lord Sumner, Lord Parmoor, Lord Wrenbury, and Sir Arthur Channell.)

Their Lordships delivered judgment to-day in this appeal from an order of the Admiralty Division in Prize of June 14 last (31 *The Times* Law Reports, 513), which decided that the War Office might requisition

¹ Printed in this JOURNAL, 1915, Vol. 9, p. 1005.

on behalf of the Crown a cargo of copper seized in the Swedish vessel Zamora while she was on a voyage from New York to Stockholm. The cargo belonged to the appellants (The Swedish Trading Company of Stockholm).

Sir Robert Finlay, K. C., Mr. Leslie Scott, K. C., Mr. Adair Roche, K. C., Mr. Balloch, and Dr. Baty were counsel for the appellants; the Attorney-General, the Solicitor-General, and Mr. Branson for the Crown.

Lord Parker of Waddington, in his judgment, said that on April 8, 1915, the Zamora was stopped by one of his Majesty's cruisers and was taken to the Orkney Islands and thence to Barrow-in-Furness. She was seized as prize in the latter port on April 19, 1915, and in due course was placed in the custody of the marshal of the Prize Court. It was admitted on the one hand that the copper was contraband of war, and on the other hand that the steamship was ostensibly bound for a neutral port. On May 14, 1915, a writ was issued by his Majesty's Procurator-General claiming confiscation of both vessel and cargo, and on June 14, 1915, the President, at the instance of the Procurator-General, made an order under Order XXIX, Rule 1, of the Prize Court Rules, giving leave to the War Department to requisition the copper, subject to an undertaking in accordance with the provisions of Order 29, Rule 5. The present appeal was from the President's order.

It would be convenient first to consider the terms of Order XXIX. Though the order in terms applied to ships only, it was by virtue of Order 1, Rule 2, of the Prize Court Rules equally applicable to goods. The first rule of Order 29 provided that where it was made to appear to the judge on the application of the proper officer of the Crown that it was desired to requisition a ship in respect of which no final decree of condemnation had been made, he should order that the ship be appraised, and on an undertaking being given in accordance with Rule 5 of the order the ship should be released and delivered to the Crown. The third rule of the order provided that where in any case of requisition under the order it was made to appear to the judge on behalf of the Crown that the ship was required for the service of his Majesty forthwith, the judge might order the vessel to be forthwith released and delivered to the Crown without appraisement. In such a case the amount payable by the Crown was to be fixed by the judge under Rule 4 of the order.

The fifth rule of the order provided that in every case of requisition

under the order an undertaking in writing should be filed by the proper officer of the Crown for payment into court on behalf of the Crown of the appraised value of the ship or of the amount fixed under Rule 4 of the order as the case might be, at such time or times as the court should declare that the same or any part thereof was required for the purpose of payment out of court.

The first observation which their Lordships desired to make on this order was that the provisions of Rule 1 were prima facie imperative. The judge was to act in a certain way whenever it was made to appear to him that it was desired to requisition the vessel or goods on his Majesty's behalf. If that were the true construction of the rule, and the judge was, as a matter of law, bound thereby, there was nothing more to be said, and the appeal must fail. If, however, it appeared that the rule so construed was not, as a matter of law, binding on the judge, it would have, if possible, to be construed in some other way. Their Lordships proposed, therefore, to consider in the first place whether the rule, if construed as an imperative direction to the judge, was to any and what extent binding.

The Prize Court Rules derived their force from orders of his Majesty in Council of April 29, 1915. These orders were expressed to be made under the powers vested in his Majesty by virtue of the Prize Court Act, 1894, or otherwise. The Act of 1894 conferred on the King in Council power to make rules for the procedure and practice of the prize courts. So far, therefore, as the Prize Court Rules related to procedure and practice, they have statutory force and were undoubtedly binding. But Order 29, Rule 1, construed as an imperative direction to the judge, was not merely a rule of procedure or practice. It could only be a rule of procedure or practice if it were construed as prescribing the course to be followed if the judge was satisfied that according to the law administered in the Prize Court the Crown had, independently of the rule, a right to requisition the vessel or goods, or if the judge was minded in the exercise of some discretionary power inherent in the Prize Court to sell the vessel or goods to the Crown.

If, therefore, Order XXIX, Rule 1, construed as an imperative direction, were binding, it must be by virtue of some power vested in the King in Council, otherwise than by virtue of the Act of 1894. It was contended by the Attorney-General that the King in Council had such a power by virtue of the royal prerogative, and their Lordships would proceed to consider this contention.

The idea that the King in Council or indeed any branch of the executive had power to prescribe or alter the law to be administered by courts of law in this country was not in harmony with the principles of our Constitution. It was true that, under a number of modern statutes, various branches of the executive had power to make rules having the force of statutes, but all such rules derived their validity from the statute which created the power, and not from the executive body by which they were made. No one would contend that the prerogative involved any power to prescribe or alter the law administered in courts of common law or equity. It was, however, suggested that the manner in which prize courts in this country were appointed and the nature of their jurisdiction differentiated them in this respect from other courts.

Before the Naval Prize Act, 1864, jurisdiction in matters of prize was exercised by the High Court of Admiralty by virtue of a commission under the Great Seal at the beginning of each war. The commission, no doubt, owed its validity to the prerogative, but it could not on that account be properly inferred that the prerogative extended to prescribing or altering the law to be administered from time to time under the jurisdiction thereby conferred. The courts of common law and equity in like manner originated in an exercise of the prerogative. The form of commission conferring jurisdiction in prize on the Court of Admiralty was always substantially the same. Their Lordships would take that quoted by Lord Mansfield in Lindo v. Rodney (2 Doug., 614) as an example. It required and authorized the Court of Admiralty "to proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships or goods which are or shall be taken, and to hear and determine according to the course of admiralty and the law of nations."

If those words were considered there appeared to be two points requiring notice, and each of them, so far from suggesting any reason why the prerogative should extend to prescribing or altering the law to be administered by a court of prize suggested strong grounds why it should not.

In the first place, all those matters on which the court was authorized to proceed, were or arose out of acts done by the sovereign power in right of war. It followed that the King must, directly or indirectly, be a party to all proceedings in a court of prize. In such a court his position was in fact the same as in the ordinary courts of the realm on a petition of right which had been duly fiated. Rights based on sovereignty were waived and the Crown accepted for most purposes the posi-

tion of an ordinary litigant. A prize court must, of course, deal judicially with all questions which came before it for determination, and it would be impossible for it to act judicially if it were bound to take its orders from one of the parties to the proceedings.

In the second place, the law which the Prize Court was to administer was not the national, or, as it was sometimes called, the municipal law, but the law of nations—in other words, international law. It was worth while dwelling for a moment on that distinction. Of course, the Prize Court was a municipal court and its decrees and orders owed their validity to municipal law. The law which it enforced might, therefore, in one sense, be considered a branch of municipal law. Nevertheless the distinction between municipal and international law was well defined. A court which administered municipal law was bound by and gave effect to the law as laid down by the sovereign state which called it into being. It need inquire only what that law was, but a court which administered international law must ascertain and give effect to a law which was not laid down by any particular state, but originated in the practice and usage long observed by civilized nations in their relations with each other or in express international agreements.

It was obvious that, if and so far as a court of prize in this country was bound by and gave effect to orders of the King in Council purporting to prescribe or alter the international law, it was administering not international but municipal law; for an exercise of the prerogative could not impose legal obligation on anyone outside the King's dominions who was not the King's subject. If an Order in Council were binding on the Prize Court such court might be compelled to act contrary to the express terms of the commission from which it derived its jurisdiction.

There was yet another consideration which pointed to the same conclusion. But for the existence of courts of prize no one aggrieved by the acts of a belligerent Power in times of war could obtain redress otherwise than through diplomatic channels and at the risk of disturbing international amity. An appropriate remedy was, however, provided by the fact that, according to international law, every belligerent Power must appoint and submit to the jurisdiction of a prize court, to which any person aggrieved had access, and which administered international as opposed to municipal law—a law which was theoretically the same, whether the court which administered it was constituted under the municipal law of the belligerent Power or of the sovereign of the person aggrieved, and was equally binding on both parties to the litigation.

It had long been well settled by diplomatic usage that, in view of the remedy thus afforded, a neutral aggrieved by any act of a belligerent Power cognizable in a court of prize ought, before resorting to diplomatic intervention, to exhaust his remedies in the prize courts of the belligerent Power.

A case for such intervention arose only if the decisions of those courts were such as to amount to a gross miscarriage of justice. It was obvious, however, that the reason for that rule of diplomacy would entirely vanish if a court of prize, while nominally administering a law of international obligation, were in reality acting under the direction of the executive of the belligerent Power.

It could not, of course, be disputed that a prize court, like any other court, was bound by the legislative enactments of its own sovereign state. A British prize court would certainly be bound by acts of the Imperial Legislature. But it was none the less true that if the Imperial Legislature passed an act the provisions of which were inconsistent with the law of nations, the Prize Court in giving effect to such provisions would no longer be administering international law. It would in the field covered by such provisions be deprived of its proper function as a prize court. Even if the provisions of the act were merely declaratory of the international law, the authority of the court as an interpreter of the law of nations would be thereby materially weakened, for no one could say whether its decisions were based on a due consideration of international obligations or on the binding nature of the act itself. The fact, however, that the prize courts in this country would be bound by acts of the Imperial Legislature afforded no ground for arguing that they were bound by the executive orders of the King in Council.

In connection with the foregoing considerations, their Lordships attach considerable importance to the report dated January 18, 1753, of the committee appointed by His Britannic Majesty to reply to the complaints of Frederick II of Prussia as to certain captures of Prussian vessels made by British ships during the war with France and Spain, which broke out in 1744. By way of reprisals for these captures, the Prussian king had suspended the payment of interest on the Silesian loan. The report, which derives additional authority from the fact that it was signed by Mr. William Murray, then Solicitor-General, afterwards Lord Mansfield, contains a valuable statement as to the law administered by courts of prize. This is stated to be the law of nations, modified in some cases by particular treaties. "If," says the report, "a sub-

ject of the King of Prussia is injured by or has a demand upon any person here, he ought to apply to your Majesty's Courts of Justice, which are equally open and indifferent to foreigner or native; so, vice versa, if a subject here is wronged by a person living in the Dominions of his Prussian Majesty, he ought to apply for redress in the King of Prussia's Courts of Justice. If the matter of complaint be a capture at sea during war, and the question relative to prize, he ought to apply to the judicatures established to try these questions. The law of nations, founded upon justice, equity, conscience and the reason of the thing, and confirmed by long usage, does not allow of reprisals, except in case of violent injuries directed or supported by the State, and justice absolutely denied in re minime dubia by all the tribunals and afterwards by the Prince. When the judges are left free and give sentence according to their conscience, though it should be erroneous, that would be no ground for reprisals. Upon doubtful questions different men think and judge differently, and all a friend can desire is that justice should be impartially administered to him as it is to the subjects of that Prince in whose Courts the matter is tried." The report further points out that in England "the Crown never interferes with the course of justice. No order or intimation is given to any Judge." It also contains the following statement: "All captures at sea as prize in time of war must be judged of in the Court of Admiralty according to the law of nations and particular treaties, if there are any. There never existed a case where a Court, judging according to the laws of England only, took cognizance of prize. * * * It never was imagined that the property of a foreign subject taken as prize on the high seas could be effected by laws peculiar to England." This report is, in their Lordships' opinion, conclusive that in 1753 any notion of a prize court being bound by the executive orders of the Crown, or having to administer municipal as opposed to international law, was contrary to the best legal opinion of the day.

The Attorney-General was unable to cite any case in which an order of the King in Council had as to matters of law been held to be binding on a court of prize. He relied chiefly on the judgment of Lord Stowell in the case of *The Fox* (Edw., 311). The actual decision in this case was to the effect that there was nothing inconsistent with the law of nations in certain Orders in Council made by way of reprisals for the Berlin and Milan Decrees, though if there had been no case for reprisals, the orders would not have been justified by international law. The

decision proceeded upon the principle that where there is just cause for retaliation neutrals may by the law of nations be required to submit to inconvenience from the acts of a belligerent Power greater in degree than would be justified had no just cause for retaliation arisen, a principle which had been already laid down in *The Lucy* (Edw., 122).

The judgment of Lord Stowell contains, however, a remarkable passage quoted in full in the court below, which refers to the King in Council possessing "legislative rights" over a court of prize analogous to those possessed by Parliament over the courts of common law. At most this amounts to a dictum, and in their Lordships' opinion, with all due respect to so great an authority, the dictum is erroneous. It is, in fact, quite irreconcilable with the principles enunciated by Lord Stowell himself. For example, in *The Maria*, a Swedish ship (1 C. Rob., 340), his judgment contains the following passage:

The seat of judicial authority is indeed locally here in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm, to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden as a neutral country which he would not admit to belong to Great Britain in the same character.

It is impossible to reconcile this passage with the proposition that the Prize Court is to take its law from Orders in Council. Moreover, if such a proposition were correct the court might at any time be deprived of the right which is well recognized of determining according to law whether a blockade is rendered invalid either because it is ineffective, or because it is partial in its operation (see *The Franciska*, 10 Moore, P. C., 37). Moreover, in *The Lucy* above referred to, Lord Stowell had, in effect, refused to give effect to the Order in Council on which the captors relied.

Lord Stowell's dictum gave rise to considerable contemporaneous criticism, and is definitely rejected by Sir R. Phillimore (Int. Law, Vol. III., Section 436). It is said to have been approved by Mr. Justice Story in the case of Masionnaire v. Keating (2 Gall., 325), but it will be found that Mr. Justice Story's remarks, on which some reliance seems to have been placed by the president in this case, are directed not to the liability of captors in their own courts of prize, but to their liability in the courts of other nations. He is in effect repeating the opinion he expressed in the case of *The Invincible*, to which their Lord-

ships have already referred. An Act, though illegal by international law, will not on that account be justiciable in the tribunals of another Power—at any rate if expressly authorized by order of the sovereign on whose behalf it is done.

Their Lordships have come to the conclusion, therefore, that at any rate prior to the Naval Prize Act, 1864, there was no power in the Crown, by Order in Council, to prescribe or alter the law which prize courts have to administer. It was suggested that the Naval Prize Act, 1864, confers such a power. Under that Act the Court of Admiralty become a permanent Court of Prize, independent of any commission issued under the Great Seal. The Act, however, by Section 55, while saving the King's prerogative, on the one hand, saves, on the other hand, the jurisdiction of the court to decide judicially, and in accordance with international law. Subject, therefore, to any express provisions contained in other sections, it leaves matters exactly as they stood before it was passed. The only express provisions which confer powers on the King in Council are: (1) those contained in Section 13 (now repealed and superseded by Section 3 of the Prize Court Act, 1894), conferring a power of making rules as to the practice or procedure of prize courts; and (2) those contained in Section 53, conferring power to make such orders as may be necessary for the better execution of the Act.

Their Lordships are of opinion that the latter power does not extend to prescribing or altering the law to be administered by the court, but merely to giving such executive directions as may from time to time be necessary. In all respects material to the present question, the law therefore remains the same as it was before the Act, nor has it been affected by the substitution under the Supreme Court of Judicature Acts, 1873 and 1891, of the High Court of Justice for the Court of Admiralty as the permanent Court of Prize in this country.

There are two further points requiring notice in this part of the case. The first arises on the argument addressed to the Board by the Solicitor-General. It may be, he said, that the court would not be bound by an Order in Council which is manifestly contrary to the established rules of international law, but there are regions in which such law is imperfectly ascertained and defined; and, when this is so, it would not be unreasonable to hold that the court should subordinate its own opinion to the directions of the executive. This argument is open to the same objection as the argument of the Attorney-General. If the court is to decide judicially in accordance with what it conceives to be the law of

nations, it cannot, even in doubtful cases, take its directions from the Crown, which is a party to the proceedings. It must itself determine what the law is according to the best of its ability, and its view, with whatever hesitation it be arrived at, must prevail over any executive order. Only in this way can it fulfil its function as a prize court, and justify the confidence which other nations have hitherto placed in its decisions.

The second point requiring notice is this. It does not follow that, because Orders in Council cannot prescribe or alter the law to be administered by the Prize Court, such court will ignore them entirely. On the contrary, it will act on them in every case in which they amount to a mitigation of the Crown rights in favor of the enemy or neutral, as the case may be. As explained in the case of The Odessa (32 The Times L. R., 103; [1916] A. C., 145), the Crown's prerogative of bounty is unaffected by the fact that the proceeds of the Crown rights or Admiralty droits are now made part of the Consolidated Fund, and do not replenish the Privy Purse. Further, the Prize Court will take judicial notice of every Order in Council material to the consideration of matters with which it has to deal, and will give the utmost weight and importance to every such order short of treating it as an authoritative and binding declaration of law. Thus an order declaring a blockade will prima facie justify the capture and condemnation of vessels attempting to enter the blockaded ports, but will not preclude evidence to show that the blockade is ineffective, and therefore unlawful. An order authorizing reprisals will be conclusive as to the facts which are recited as showing that a case for reprisals exists, and will have due weight as showing what, in the opinion of His Majesty's advisers, are the best or only means of meeting the emergency; but this will not preclude the right of any party aggrieved to contend, or the right of the court to hold, that these means are unlawful, as entailing on neutrals a degree of inconvenience unreasonable, considering all the circumstances of the case. Further, it cannot be assumed, until there be a decision of the Prize Court to that effect, that any executive order is contrary to law, and all such orders, if acquiesced in and not declared to be illegal, will, in the course of time, be themselves evidence by which international law and usage may be established. (See Wheaton's Int. Law, 4th English edition, pp. 25 and 26.)

On this part of the case, therefore, their Lordships hold that Order 29, Rule 1, of the Prize Court Rules, construed as an imperative direction to the court, is not binding. Under these circumstances the rule must, if possible, be construed merely as a direction to the court in cases in which it may be determined that, according to international law, the Crown has a right to requisition the vessels or goods of enemies or neutrals. There is much to warrant this construction, for the Order in Council, by which the Prize Court Rules were made, conforms to the provisions of the Rules Publication Act, 1893, and on reference to that Act it will be found inapplicable to Orders in Council, the validity of which depends on an exercise of the prerogative. It is reasonable, therefore, to assume that the words "or otherwise," contained in the Order in Council, refer to such other powers, if any, as the Crown possesses of making rules, and not to powers vested in the Crown by virtue of the prerogative.

The next question which arises for decision is whether the order appealed from can be justified under any power inherent in the court as to the sale or realization of property in its custody pending decision of the question to whom such property belongs. It cannot, in their Lordships' opinion, be held that the court has any such inherent power as laid down by the president in this case. The primary duty of the Prize Court (as indeed of all courts having the custody of property the subject of litigation) is to preserve the res for delivery to the persons who ultimately establish their title. The inherent power of the court as to sale or realization is confined to cases where this cannot be done, either because the res is perishable in its nature, or because there is some other circumstance which renders its preservation impossible or difficult. In such cases it is in the interest of all parties to the litigation that it should be sold or realized, and the court will not allow the interests of the real owner to be prejudiced by any perverse opposition on the part of a rival claimant. Such a limited power would not justify the court in directing a sale of the res merely because it thought fit so to do, or merely because one of the parties desired the sale or claimed to become the purchaser.

It remains to consider the third, and perhaps the most difficult, question which arises on this appeal—the question whether the Crown has, independently of Order 29, Rule 1, any and what right to requisition vessels or goods in the custody of the Prize Court pending the decision of the court as to their condemnation or release. In arguing this question the Attorney-General again laid considerable stress on the Crown's prerogative, referring to the recent decision of the Court of Appeal in

this country re a petition of right (31 The Times L. R., 596; [1915] 3 K. B., 649). There is no doubt that under certain circumstances and for certain purposes the Crown may requisition any property within the realm belonging to its own subjects. But this right being one conferred by municipal law is not, as such, enforceable in a court which administers international law. The fact, however, that the Crown possesses such a right in this country, and that somewhat similar rights are claimed by most civilized nations, may well give rise to the expectation that, at any rate in times of war, some right on the part of a belligerent Power to requisition the goods of neutrals within its jurisdiction will be found to be recognized by international usage. Such usage might be expected either to sanction the right of each country to apply in this respect its own municipal law, or to recognize a similar right of international obligation.

In support of the former alternative, which is apparently accepted by Albrecht (Zeitschrift für Völkerrecht und Bundesstaatsrecht, VI Band, Breslau, 1912), it may be argued that the mere fact of the property of neutrals being found within the jurisdiction of a belligerent Power ought, according to international law, to render it subject to the municipal law of that jurisdiction. The argument is certainly plausible and may in certain cases and for such purposes be sound. In general, property belonging to the subject of one Power is not found within territory of another Power without the consent of the true owner, and this consent may well operate as a submission to the municipal law. A distinction may perhaps be drawn in this respect between property the presence of which within the jurisdiction is of a permanent nature, and property the presence of which within the jurisdiction is temporary only. The goods of a foreigner carrying on business here are not in the same position as a vessel using an English port as a port of call. Even in the latter case, however, it is clear that for some purposes, as, for example, sanitary or police regulations, it would become subject to the lex loci. After all, no vessel is under ordinary circumstances under any compulsion to come within the jurisdiction. Different considerations arise with regard to a vessel brought within the territorial jurisdiction in exercise of a right of war. In the latter case there is no consent of the owner or of anyone whose consent might impose obligations on the owner. Nevertheless even here, the vessel might well for police and sanitary purposes become subject to the municipal law. however, that it became so subject for all purposes, including the municipal right of requisition, would give rise to various anomalies.

The municipal law of one nation in respect of the right to requisition the property of its subjects differs or may differ from that of another nation. The circumstances under which, the purposes for which, and the conditions subject to which, the right may be exercised need not be the same. The municipal law of this country does not give compensation to a subject whose land or goods are requisitioned by the Crown. The municipal law of other nations may insist on compensation as a condition of the right. The circumstances and purposes under and for which the right can be exercised may similarly vary. It would be anomalous if the international law by which all nations are bound could only be ascertained by an inquiry into the municipal law which prevails in each. It would be a still greater anomaly if in times of war a belligerent could, by altering his municipal law in this respect, affect the rights of other nations or their subjects. The authorities point to the conclusion that international usage has in this respect developed a law of its own, and has not recognized the right of each nation to apply its own municipal law.

The right of a belligerent to requisition the goods of neutrals found within its territory, or territory of which it is in military occupation, is recognized by a number of writers on international law. It is sometimes referred to as the right of angary, and is generally recognized as involving an obligation to make full compensation. There is, however, much difference of opinion as to the precise circumstances under which and the precise purposes for which it may be lawfully exercised. was exercised by Germany during the Franco-German War of 1870 in respect of property belonging to British and Austrian subjects. The German military authorities seized certain British ships and sank them in the Seine. They also seized certain Austrian rolling-stock and utilized it for the transport of troops and munitions of war. The German Government offered full compensation, and its action was not made the subject of diplomatic protest, at any rate by Great Britain. In justifying the action of the military authorities with regard to the British ships, Count von Bismarck laid stress on the fact "that a pressing danger was at hand and every other method of meeting it was wanting, so that the case was one of necessity," and he referred to Phillimore, Int. Law, Vol. III, Section 29. He did not rely on the municipal law of either France or Germany.

On reference to Phillimore it will be found that he limits the right to cases of "clear and overwhelming necessity." In this he agrees with De Martens, who speaks of the right existing only in cases of "extreme necessity" (Law of Nations, Book VI, Section 7); and with Gessner, who says that the necessity must be real: that there must be no other means less violent "de sauver l'existence," and that neither the desire to injure the enemy nor the greatest degree of convenience to the belligerent is sufficient. (Droit des Neutres, p. 154, 2nd ed., Berlin, 1876.) It is difficult to see how the facts of the German Government to which reference has been made come within the limits thus laid down. might have been convenient to Germany and hurtful to France to sink English vessels in the Seine or to utilize Austrian rolling-stock for transport purposes, but clearly no extreme necessity involving actual existence had arisen. Azuni, on the other hand (Droit maritime de l'Europe, Vol. I, C. iii, Art. 5), thought that an exercise of the right would be justified by necessity or public utility; in other words that a very high degree of convenience to the belligerent Power would be sufficient. Germany must be taken to have asserted and England and Austria to have acquiesced in the latter view, which is the view taken by Bluntschli (Droit international, Section 795 bis) and in the only British prize decision dealing with this point.

The case to which their Lordships refer is that of The Curley, The Magnet, etc., reported in Stewart's Vice-Admiralty Cases (Nova Scotia), p. 312. The ships in question with their cargoes had been seized by the British authorities as prize in the early days of the war with the United States of America, which broke out in 1812, and had been brought into port for adjudication. The Lieutenant-Governor of the province and the Admiral and Commander-in-Chief of His Majesty's ships on that station thereupon presented a petition for leave to requisition some of the ships and parts of the cargoes pending adjudication. In his judgment Dr. Croke lays it down that though as a rule the court has no power of selling or bartering vessels or goods in its custody, prior to adjudication to any departments of his Majesty's service, nevertheless there may be cases of necessity in which the right of self-defence supersedes and dispenses with the usual modes of procedure. He held that such a case had in fact arisen, and accordingly granted the prayer of the petitioners: (1) as to certain small arms "very much and immediately needed for the defence of the province"; (2) as to certain oak timbers of which there was "great want" in his Majesty's naval

yard at Halifax; and (3) as to a vessel immediately required for use as a prison ship. The appraised value of the property requisitioned was in each case ordered to be brought into court.

It should be observed that with regard to ships and goods of neutrals in the custody of the Prize Court for adjudication, there are special reasons which render it reasonable that the belligerent should in a proper case have the power to requisition them. The legal property or dominion is, no doubt, still in the neutral, but ultimate condemnation will vest it in the Crown, as from the date of the seizure as prize, and meanwhile all beneficial enjoyment is suspended. In cases where the ships or the goods are required for immediate use, this may well entail hardship on the party who ultimately establishes his title. To mitigate the hardship in the case of a ship a custom has arisen of releasing it to the claimant on bail, that is, on giving security for the payment of its appraised value. It may well be that in practice this was never done without the consent of the Crown, but such consent would not be likely to be withheld, unless the Crown itself desired to use the ship after condemnation. The 25th Section of the Naval Prize Act, 1864, now confers on the judge full discretion in the matter. This being so, it is not unreasonable that the Crown on its side should in a proper case have power to requisition either vessel or goods for the national safety. It must be remembered that the neutral may obtain compensation for loss suffered by reason of an improper seizure of his vessel or goods, but the Crown can never obtain compensation from the neutral in respect of loss occasioned by a claim to release which ultimately fails.

The power in question was asserted by the United States of America in the Civil War which broke out in 1861. In The Memphis (Blatchford, 202), in The Ella Warley (Blatchford, 204), and in The Stephen Hart (Blatchford, 387) Betts, J., allowed the War Department to requisition goods in the custody of the Prize Court, and required for purposes in connection with the prosecution of the war. In the case of The Peterhoff (Blatchford, 381) he allowed the vessel itself to be similarly requisitioned by the Navy Department. The reasons of Betts, J., as reported, are not very satisfactory, for they leave it in doubt whether he considered the right he was enforcing to be a right according to the municipal law of the United States overriding the international law, or to be a right according to the international law. But his decisions were not appealed, nor does it appear that they led to any diplomatic protest.

On March 3, 1863, after the decisions above referred to, the United States Legislature passed an Act (Congress, Sess. III., c. 86, of 1863) whereby it was enacted (Section 2) that the Secretary of the Navy or the Secretary of War should be and they or either of them were thereby authorized to take any captured vessel, any arms or munitions of war or other material for the use of the government, and when the same should have been taken before being sent in for adjudication or afterwards, the department for whose use it was taken should deposit the value of the same in the Treasury of the United States, subject to the order of the court in which prize proceedings might be taken, or if no proceedings in prize should be taken, to be credited to the Navy Department and dealt with according to law.

It is impossible to suppose that the United States Legislature in passing this Act intended to alter or modify the principles of international law in its own interest or against the interest of neutrals. On the contrary, the Act must be regarded as embodying the considered opinion of the United States authorities as to the right possessed by a belligerent to requisition vessels or goods seized as prize before adjudication. Nevertheless, their Lordships regard the passing of the Act as somewhat unfortunate from the standpoint of the international lawyer. In the first place, it seems to cast some doubt upon the decisions already given by Betts, J. In the second place, it tends to weaken all subsequent decisions of the United States prize courts on the right to requisition vessels or goods, as authorities on international law, for these courts are bound by the provisions of the Act, whether it be in accordance with international law or otherwise. In the third place, their Lordships are of opinion that the provisions of the Act go beyond what is justified by international usage. The right to requisition recognized by international law is not, in their opinion, an absolute right, but a right exercisable in certain circumstances and for certain purposes only. Further, international usage requires all captures to be brought promptly into the Prize Court for adjudication, and the right to requisition, therefore, ought as a general rule be exercised only when this has been done. It is for the court and not the executive of the belligerent state to decide whether the right claimed can be lawfully exercised in any particular case.

It appears that the British Government, shortly after the Act was passed, protested against the provisions of the 2nd section. The grounds for such protest appear in Lord Russell's dispatch of April 21, 1863.

The first is the primary duty of the court to preserve the subject-matter of the litigation for the party who ultimately establishes his title. In stating it Lord Russell ignores, and (having regard to the provisions of the section) was probably entitled to ignore, all exceptional cases based on the right of angary. The second ground is that such a general right as asserted in the section would encourage the making of seizures known at the time when they are made to be unwarrantable by law merely because the property seized might be useful to the belligerent. This objection is more serious, but it derives its chief force from the fact that the right asserted in the section can be exercised before the property seized is brought into the Prize Court for adjudication, and, even when it has so been brought in, precludes the judge from dealing judicially with the matter. If the right accorded by international law to requisition vessels or goods in the custody of the court be exercised through the court, and be confined to cases in which there is really a question to be tried, and the vessel or goods cannot, therefore, be released forthwith, the objection is obviated.

It further appears that the United States took the opinion of their own Attorney-General on the matter (10th vol., Opinions of A.-G. of U. S., p. 519), and were advised that there was no warrant for the section in international law, and that it would not be advisable to put it into force, in cases where controversy was likely to arise. The Attorney-General did not, any more than Lord Russell, refer to exceptional cases based on the right of angary, but dealt only with the provisions of the section as a whole.

Some stress was laid in argument on the cases cited in the judgment in the court below upon what is known as "the right of pre-emption," but in their Lordships' opinion these cases have little, if any, bearing on the matter now in controversy. The right of pre-emption appears to have arisen in the following manner: According to the British view of international law, naval stores were absolute contraband, and if found on a neutral vessel bound for an enemy port were lawful prize. Other countries contended that such stores were only contraband if destined for the use of the enemy government. If destined for the use of civilians they were not contraband at all. Under these circumstances the British Government, by way of mitigation of the severity of its own view, consented to a kind of compromise. Instead of condemning such stores as lawful prize, it bought them out and out from their neutral owners, and this practice, after forming the subject of many particular treaties,

at last came to be recognized as fully warranted by international law. It was, however, always confined to naval stores, and a purchase pursuant to it put an end to all litigation, between the Crown on the one hand and the neutral owner on the other. Only in cases where the title of the neutral was in doubt and the property might turn out to be enemy property was the purchase money paid into court. It is obvious, therefore, that this "right of pre-emption" differs widely from the right to requisition the vessels or goods of neutrals, which is exercised without prejudice to, and does not conclude or otherwise affect the question whether the vessel or goods should or should not be condemned as prize. On the whole question their Lordships have come to the following conclusion: A belligerent Power has by international law the right to reqquisition vessels or goods in the custody of its prize court pending a decision of the question whether they should be condemned or released. but such right is subject to certain limitations. First, the vessel or goods in question must be urgently required for use in connection with the defence of the realm, the prosecution of the war, or other matters involving national security. Secondly, there must be a real question to be tried, so that it would be improper to order an immediate release. And, thirdly, the right must be enforced by application to the Prize Court, which must determine judicially whether, under the particular circumstances of the case, the right is exercisable.

With regard to the first of these limitations, their Lordships are of opinion that the judge ought, as a rule, to treat the statement on oath of the proper officer of the Crown to the effect that the vessel or goods which it is desired to requisition are urgently required for use in connection with the defence of the realm, the prosecution of the war, or other matters involving national security, as conclusive of the fact. This is so in the analogous case of property being requisitioned under the municipal law (see Warrington, L. J., in the case of In re a Petition of Right, supra, at p. 666), and there is every reason why it should be so also in the case of property requisitioned under the international law. Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public.

With regard to the second limitation, it can be best illustrated by referring to the old practice. The first hearing of a case in prize was upon the ship's papers, the answers of the master and others to the standing interrogatories and such special interrogatories as might have been allowed, and any further evidence which the judge under special circumstances, thought it reasonable to admit. If, on this hearing, the judge was of opinion that the vessel or goods ought to be released forthwith, an order for release in general would be made. A further hearing was not readily granted at the instance of the Crown. If, on the other hand, the judge was of opinion that the vessel or goods could not be released forthwith, a further hearing would be granted at the instance of the claimant. If the claimant did not desire a further hearing, the vessel or goods would be condemned. This practice, though obviously unsuitable in many respects to modern conditions, had the advantage of demonstrating at an early stage of the proceedings whether there was a real question to be tried, or whether there ought to be an immediate release of the vessel or goods in question. In their Lordships' opinion the judge should, before allowing a vessel or goods to be requisitioned, satisfy himself (having regard of course to modern conditions) that there is a real case for investigation and trial, and that the circumstances are not such as would justify the immediate release of the vessel or goods. The application for leave to requisition must, under the existing practice, be an interlocutory application, and, in view of what has been said, it should be supported by evidence sufficient to satisfy the judge in this respect. In this manner Lord Russell's objection as to the encouragement of unwarranted seizures is altogether obviated.

With regard to the third limitation, it is based on the principle that the jurisdiction of the Prize Court commences as soon as there is a seizure in prize. If the captors do not promptly bring in the property seized for adjudication, the court will at the instance of any party aggrieved, compel them to do so. From the moment of seizure, the rights of all parties are governed by international law. It was suggested in argument that a vessel brought into harbor for search might, before seizure, be requisitioned under the municipal law. This point, if it ever arises, would fall to be decided by a court administering municipal law, but from the point of view of international law it would be a misfortune if the practice of bringing a vessel into harbor for the purposes of search—a practice which is justifiable because search at sea is impossible under the conditions of modern warfare—were held to give rise to rights which could not arise if the search took place at sea.

It remains to apply what has been said to the present case. In their

Lordships' opinion, the order appealed from was wrong, not because, as contended by the appellants, there is by international law no right at all to requisition ships or goods in the custody of the court, but because the judge had before him no satisfactory evidence that such a right was exercisable. The affidavit of the director of army contracts, following the words of Order 29, R. 1, merely states that it is desired on behalf of his Majesty to requisition the copper in question. It does not state that the copper is urgently required for national purposes. Further, the affidavit of Sven Hoglund, which is unanswered, so far from showing that there was any real case to be tried, suggests a case for immediate Under these circumstances, the normal course would be to discharge the order appealed from without prejudice to another application by the Procurator-General supported by proper evidence. But the copper in question has long since been handed over to the War Department, and, if not used up, at any rate cannot now be identified. No order for its restoration can therefore be made, and it would be wrong to require the government to provide other copper in its place. Under the old procedure, the proper course would have been to give the appellant, in case his claim to the copper be ultimately allowed, leave to apply to the court for any damage he may have suffered by reason of its having been taken by the government under the order.

It was, however, suggested that the procedure prescribed by the existing Prize Court Rules precludes the possibility of the court awarding damages or costs in the existing proceedings. Under the old practice the captors were parties to every proceeding for condemnation, and damages and costs could in a proper case have been awarded as against But every action for condemnation is now instituted by the Procurator-General on behalf of the Crown, and the captors are not necessarily parties. It is said that neither damages nor costs can be awarded against the Crown. It is not suggested that the persons entitled to such damages or costs are deprived of all remedy, but it is urged that in order to recover either damages or costs, if damages or costs are claimed, they must themselves institute fresh proceedings as plaintiffs, not against the Crown, but against the actual captors. This result would, in their Lordships' opinion, be extremely inconvenient, and would entail considerable hardships on claimants. therefore, the Prize Court Rules ought to be construed so as to avoid it, and, in their Lordships' opinion, the Prize Court Rules can be so construed.

It will be observed that, by Order I, Rule 1, the expression "captor" is, for the purposes of proceedings in any cause or matter, to include "the proper officer of the Crown," and "the proper officer of the Crown" is defined as the King's Proctor or other law officer or agent authorized to conduct prize proceedings on behalf of the Crown within the jurisdiction of the court.

It is provided by Order II, Rule 3, that every cause instituted for the condemnation of a ship or (by virtue of Order I, Rule 2) goods, shall be instituted in the name of the Crown, though the proceedings therein may with the consent of the Crown, be conducted by the actual captors. By Order II, Rule 7, in a cause instituted against the "captor" for restitution or damages, the writ is to be in the form No. 4 of Appendix A. This would appear to contemplate that an action for damages can be instituted against the proper officer of the Crown, any argument to the contrary, based upon the form of writ as originally framed, being rendered invalid by the alterations in such form introduced by Rule No. 5 of the Prize Court Rules under the Order in Council dated March 11, 1915. It is not, however, necessary to decide this point.

Order V provides for proceedings in case of failure to proceed by captors. Under Rules 1 and 2, which contemplate the case of no proceedings having been yet instituted, the claimant must issue a writ, and can then apply for relief by way of restitution, with or without damages and costs. It does not appear against whom the writ is to be issued, whether against the actual captors or the proper officer of the Crown who ought to have instituted proceedings. Under Rule 3, however, which contemplates that proceedings have been instituted, it is provided that, if the captors (which, in the case of an action for a condemnation, must of course mean the proper officer of the Crown) fail to take any steps within the respective times provided by the rules, or, in the opinion of the judge, fail to prosecute with effect the proceedings for adjudication, the judge may, on the application of a claimant, order the property to be released to the claimant, and may make such order as to damages or costs as he thinks fit. This rule, therefore, distinctly contemplates that the Crown or its proper officer may be made liable for damages and costs. Neither damages nor costs could be awarded against persons who were not parties to the proceedings, and it can hardly have been the intention of the rules to make third parties liable for the default of those who were actually conducting the proceedings.

By Order VI proceedings may be discontinued by leave of the judge.

but such discontinuance is not to affect the right, if any, of the claimant to costs and damages. This again contemplates that in an action for condemnation the claimant may have a right to costs and damages and, as the Crown is the only proper plaintiff in such an action, to costs and damages against the Crown.

Order XIII is concerned with releases. They are to be issued out of the registry and, except in the six cases referred to in Rule 3, only with the consent of the judge. One of the excepted cases is when the property is the subject of proceedings for condemnation—that is, of proceedings in which the Crown by its proper officer is plaintiff, and when a consent to restitution signed by the captor (again by the proper officer of the Crown) has been filed. Another excepted case is when proceedings instituted by or on behalf of the Crown are discontinued. By Rule 4 no release is to affect the right of any of the owners of the property to costs and damages against the "captor," unless so ordered by the judge. In the cases last referred to "captor" must again mean the proper officer who is suing on behalf of the Crown.

Order XLIV deals with appeals, and provides that in every case the appellant must give security for costs to the satisfaction of the judge. In cases of appeals from a condemnation or in other cases in which the Crown by its proper officer would be a respondent, this provision could serve no useful purpose unless costs could be awarded in favor of the Crown, and if costs can be awarded in favor of, it follows that they can similarly be awarded against the Crown.

It is to be observed that unless the judgment or order appealed from be stayed pending appeal, Rule 4 of this order contemplates that persons in whose favor it is executed will give security for the due performance of such order as his Majesty in Council may think fit to make. Their Lordships were not informed whether such security was given in the present case.

In their Lordships' opinion, these rules are framed on the footing that where the Crown by its proper officer is a party to the proceedings, it takes upon itself the liability as to damages and costs to which under the old procedure the actual captors were subject. This is precisely what might be expected, for otherwise the rules would tend to hamper claimants in pursuing the remedies open to them according to international law. The matter is somewhat technical, for even under the old procedure the Crown, as a general rule, in fact defrayed the damages and costs to which the captors might be held liable. The common

law rule that the Crown neither paid nor received costs is, as pointed out by Lord Macnaghten, in Johnson v. The King (20 The Times L. R., 697; [1904] A. C., 817) subject to exceptions.

Their Lordships therefore have come to the conclusion that in proceedings to which, under the new practice, the Crown instead of the actual captors is a party, both damages and costs may in a proper case be awarded against the Crown or the officer who in such proceedings represents the Crown.

The proper course, therefore, in the present case is to declare that upon the evidence before the President he was not justified in making the order the subject of this appeal and to give the appellants leave in the event of their ultimately succeeding in the proceedings for condemnation to apply to the court below for such damages if any, as they may have sustained by reason of the order and what has been done under it.

Their Lordships will humbly advise his Majesty accordingly, but inasmuch as the case put forward by the appellants has succeeded in part only they do not think that any order should be made as to the costs of the appeal.

BOOK REVIEWS

Jurisdiction et Droit International Public. By L. Van Praag. The Hague: Librairie Belinfaute Frères. 1915. pp. 579.

Dr. Van Praag has produced a volume, of somewhat more than six hundred pages, quarto, upon the interesting and difficult topic of "Jurisdiction and Public International Law." His treatment of the theme is often more philosophical than legal or professional. Reason plays a large part, though precedent and authority are not neglected. He apologizes for his inability to read the Slavic, Italian, Spanish and Scandinavian writers on this subject and for their consequent omission from his citations, but he has made extended use of the French, English, German, Dutch, and Latin authors, as well as those of this country. Often he gives more than half of his pages to extracts and citations from these texts.

He says in his preface that a juridical work is not made to please but to convince, and that it ought not to fear being dull in order to be convincing. Accordingly he adopts an intricate, parenthetical style, which though often laborious, enables him to make minute distinctions and to enumerate exceptions with scrupulous care.

His analytical table of contents is full and systematic, covering twenty pages, and in it are found discussed many subjects which are of present interest, as "What is a ship of War?" (pp. 499–500).

He greatly amplifies the topic of "Exterritoriality" as affecting Jurisdiction, going into many details as to sovereigns, princes, ambassadors, diplomatic representatives of all sorts and their entourage, government ships and their equipage, as well as government aërial craft of all sorts with their equipage. As to these last, he finds no customary rule yet established, but he discusses and discriminates the analogies.

The work is one of great industry and research and considerable subtlety. It must be welcomed as a serious and laborious attempt to solve the many jurisdictional problems which confront and often baffle the international lawyer and publicist in the matter of jurisdiction. The topics considered, are not such as can be discussed dogmatically or concerning which hard and fast rules, fully crystallized and accepted,

can be discovered and displayed. The discussion by Dr. Van Praag is habitually fair, ingenuous and ingenious, and supported by adequate learning and reference to the authorities.

His work must therefore be received as a brave and honest attempt to guide us through the fog which still obscures many questions of international jurisdiction. It is distinctly useful, though it does not wholly dissipate the fog.

CHARLES NOBLE GREGORY.

Science et Technique en Droit Privé Positif. Seconde Partie. Elaboration Scientifique du droit positif. By François Geny. Paris: Recueil Sirey. 1915. pp. xi, 422.

The concept Natural Law is a permanent possession of the moral and juridical world. Since the first speculations on the nature of law and justice up to the present day, there never has been a moment when the idea of Natural Law in one or more of its chameleon colors has not been a factor of thought and action. Truly, there have been periods when it has seemed, under the weight of assault, that the vitality of the Natural Law concept had been crushed to death; but just so often as its epitaph was being carved, it has reappeared beyond the sacred precincts of the charnel-house, either in its old or in a new form, reinvigorated with a disconcerting resistance to the predatory instincts of rival theories of law. It has thrived by assaults and battles. It is not merely a never-ending dream of mankind, as Windscheid put it; it is a perpetual article of faith.

In a review of the first part of the present work for this JOURNAL in July, 1915, the learned author's definition of law is found to contain as an essential element, the idea of Natural Law. In order that the reader may not be misled, the author now boldly asserts in the emphasis of italics that "Natural Law reduced to its necessary minimum * * * furnishes an indispensable basis for truly scientific treatment of positive law." In an earlier work the author was committed to the statement that Natural Law is an idea too vague to serve as a working-basis for positive law. Apparently, on this proposition, there has intervened something of a change of position.

Reduced to ultimate terms, there are two primary views of justice (which is the crux of all legal philosophy): first, that positive law itself is the sole standard of justice; second, that positive law is not the sole standard of justice. As to the first view, there are two sorts of schools

of thought: (a) the positive view which asserts, by virtue of the nature of positive law as a natural or biological product, representing the conscious compromise or the unconscious adaptation of conflicting human interests; that positive law arises as a kind of social precipitate which itself represents the wisdom of the race; (b) the negative view, which, without any philosophical examination of its data, accepts positive law as all-sufficient, and which, therefore, inquires no further. It is manifest that each of these theories of justice embraces diverse minor programs. Illustrative of this point, are the Imperative and Historical Schools which are especially familiar to the Anglo-American world, and which, in the above classification, are types of the negative philosophical aspect of the first attitude toward the concept of justice.

The second point of view is, likewise, a complex of many subordinate positions. These positions may be divided into the following leading groups: (a) The view that all positive law is an artificial interference with the natural process of struggle and conflict in life and therefore philosophically unjustifiable; (b) that positive law is validated by an external, objective standard of justice; (c) that positive law is just or unjust as measured by a subjective criterion; and (d) that the justice or injustice of institutions of positive law is determined by a transcendental measure.

A book review cannot conveniently be made the means of a fortified philosophical thesis, and much less a treatise; but it may be pointed out that Natural Law may mean all things to all men. This perhaps accounts for the fact that from the Sophists to Geny there have appeared in the world nearly as many varieties of Natural Law as there have been writers on legal philosophy. The "might is right" of Spinoza, the categorical imperative of Kant, the unfoldment of the Völksgeist of Savigny, the "what is real is rational" of Hegel, the compromise of interest of Merkel, the social utilitarianism of Jhering; all these—and can anything in legal-philosophical theory be omitted?—are varieties of Natural Law. Natural Law thus becomes nearly synonymous with legal philosophy; and, in point of fact, it was, it seems, until recent years, the custom to label the course of legal philosophy in German law schools as Natural Law.

However, since the inclusive species of Natural Law of the eighteenth century has been thoroughly battered in the breach, a genuine and far-reaching improvement has overtaken the speculations on justice. Natural Law in the present age, with only one important exception

(i. e., the tradition of Anglo-American law embalmed in the declaratory theory of precedent), has given over the standpoint that antecedent to or alongside of formulated or declared law there may be discovered a complete and permanent code of Natural Law sufficient to the last detail to adjust the conflicts of human life. Both adjectives of the code have been omitted by the present-day schools of thought. Natural Law is neither a complete code of prescriptions, nor is it a perpetual monument of truth and justice. Yet, Natural Law remains. But it is Natural Law thoroughly saturated, and, also, invigorated, first, with the historical element, and, later, with the evolutionary concept. It now represents not a fixed and full content of rules, but an instrument for charting the directions of human destiny in accordance with which the conformability of legal rules is to be standardized. This would appear to be the best and the most unimpeachable development possible at this time in the Natural Law idea; but the regnant schools which still flourish under the ancient banner, thinking that such a solution is too transcendental, have occupied intermediate ground—ground between the first line trenches, as it were,—and propose to construct lines of barbwire around their legal establishment beyond which it shall formally be impossible to go (Stammler, Del Vecchio) and within which protected limits there may be a great variety of historical movement.

Geny, if we understand him, does not accept as the basis for his Natural Law either the idea of immanence or transcendentalism. It seems to be a compound of objective and subjective factors determined by a principle of intermediate ends. But yet, for him "while the regulation of moral and social conduct follows a progressive development, the criterion must be sought in a domain superior to the contingencies and hazards of life." Again, the "rational datum must intervene with a preponderant value." He reverts to the classical form of Natural Law in which the rational element is the essential basis; but he rejects the strict Natural Law (as it appears, e. g., in Boistel or Cathrein) where the unsuccessful attempt is made to answer all concrete questions of law and justice. As he puts it, "the rational cannot be reduced to a single formula of precise contour."

Objective justice is represented to the mind in the idea of order, "in the idea of an established equilibrium following the idea of harmony [based on the nature of man as a social, free, and reasonable being], moral in its substance, external in its manifestations, and founded on the conditions of life of man in society." But he adds, "this abstract



nature of justice is too vague for a scientific elaboration of law. It implies a philosophy which is wanting." This appears to involve the author in inconsistency; but whether it does or not, it is clear that the Natural Law function in legal method is somewhat elusive.

The objective basis of Geny's rationalism is found in an "examination of institutions of private law which show at their base certain natural data in which reason discovers, but not without difficulty, directions for human conduct." "History reinforces and makes precise these directions which a common ideal permits in turn to be amplified." In it is found an "ensemble of data giving the object of a true and scientific elaboration of law."

In a word, the method of scientific elaboration is based on the following elements (as we understand Geny's position): 1. the nature of things; 2. reason and the social ideal; and 3. legal evolution. Geny forestalls the charge of eclecticism for his system with its multiple bases, and thinks that he has presented not a mere collection of attractive residues of other systems, but a reasoned syncretism based on Natural Law.

Natural Law as employed by Geny is equivalent to the issues of reason, derived from the nature of man in contact with the world, and which, because of its origin and nature appears universal and immutable. But it becomes Natural Law with an objective base instead of a purely subjective content. He, therefore, finds himself in accord with even such a revolutionary as Duguit in his position touching the objective basis of law. The problem of purpose is always one of the stumbling blocks in legal philosophy, and too little attention has been given heretofore to the important distinction between ultimate and intermediate ends. Geny favors that view of Natural Law which is represented in this connection by Brütt as an amendment of the still somewhat inflexible point of view of Stammler. Of the philosophical views which have to a greater or less extent agitated the waters of French thinking, Geny at the outset rejects, among a variety of other things, the position of juridical socialism, and individual anarchism; and, incidentally, as a datum which further concerns the author's local setting, he accepts the proposition of intuition.

If the author had not already shown his capacity to correlate his philosophy of law with concrete problems (as, for example, in his elaborate work, Des Droits sur les Lettres Missives, reviewed in this JOURNAL, October, 1914), doubt might and would be raised as to the practical value of his method. Judge Tanon, on this point, somewhere remarked

with some bitterness that when legal philosophers descend to concrete problems, they are obliged to use the same methods as practical men: and that the metaphysical postulates of the philosopher are lost in the actual solution. Such an attitude while in substance inadequate, may still be valuable in aiding to keep clearly before the mind proper limitations on the possibilities of legal philosophy in the historical world, and in restraining overhopeful efforts to hasten the evolutionary process. It was the great merit of Aquinas to see that the law must be measured by what is possible; and, after all, legal philosophy in a very important measure has the mission, not of regenerating the world, or of eliminating links in the chain of human destiny, but of explaining social institutions, and of attempting with great caution to project the path of the future. The autonomy of the human will and the scope of method must always take a subordinate place; and while the efficacy of effort is not to be wholly denied in an attitude of tortured abnegation, or in resignation to an Heraclitean flux, the function of effort must not be overemphasized. It is precisely the task of philosophy to find the way out of all these difficulties by an intimate understanding of the nature of the Time Spirit, on one hand, and a scientifically fortified view of the reality in which it manifests itself on the other.

The larger part of Geny's present contribution deals with a review of modern legal philosophy. No one in so vast a field can do more with thoroughness than treat particular parts of the whole. Geny has limited his review to France and Germany. His examination of schools and writers appears to be based on first-hand reading, and his documentation is always thorough. As a summary, this work will be found valuable for the reader who lacks the time or inclination to read the sources.

While we believe that no true philosophy of law can exist without a metaphysical foundation—a position which is put aside by Geny—yet we can regard the author's plan as greatly superior, in its possibilities, and richness of material, either from the angle of what we can know, or, of what we can do, in the field of legal phenomena, to that type of positivism represented by the Comtean social physics, or the other extreme, juridical idealism. We are, furthermore, constrained to believe, in the midst of much that we are unwilling to accept in Geny for a philosophy of law, that he has in the main hit upon a valuable method for rationalizing a hitherto unscientific legislative policy; and we therefore conclude that we have before us a valuable contribution which should be an influential document in reaching solid ground for legal

ideas in the world upheaval which has thrown all social, ethical, and juridical values into the melting pot.

Two additional parts are promised dealing with a technical elaboration of private law, to complete the work of which the theoretical foundations have now been laid.

ALBERT KOCOUREK.

Notes of a Busy Life. By Joseph Benson Foraker. Cincinnati: Stewart & Kidd Company. 2 vols.

This is practically an autobiography from the author's birth in 1846 to his retirement from public life in 1914. As he was an active participant in public affairs from his boyhood, this work constitutes a record of and comment on the most important questions which agitated the people of this country through a period of more than sixty years by one of the most virile and active minds this nation has produced.

He entered the Union Army as a private at the age of sixteen and was discharged from the service as captain at the age of twenty. He completed a full collegiate course of study by means of the money he had saved from his army pay and a contracted indebtedness not discharged until he had entered his profession. He became an able and successful lawyer and a judge of repute. At the age of forty he entered political life, was four times nominated for governor of his State and twice filled the office. He attended the Republican national conventions as a delegate at large consecutively from 1880 to 1904; and, as indicating his effectiveness as a speaker, he was twice chosen to nominate Mr. Sherman for President, and twice Mr. McKinley. He entered the Senate of the United States in 1897; and served in that body until 1909. Such a varied and distinguished service may well be styled "A Busy Life," and the narrative will be found of unflagging interest from beginning to end, but this review must be limited to that part of his career in the Senate which relates to foreign questions and international

On his admission to the Senate he was placed on the Committee on Foreign Relations, and remained on that committee during the twelve years of his service. John Sherman, so long a Senator from Ohio, entered the cabinet of President McKinley as Secretary of State at the same time that Mr. Foraker entered the Senate, and immediately thereafter Mr. Mark A. Hanna succeeded Mr. Sherman as Senator. In *The Notes* Senator Foraker comments:

This is a disagreeable chapter in Ohio politics, not only because of the embarrassment caused by the plan agreed upon by the President and Mr. Hanna for putting Mr. Sherman in the cabinet and Mr. Hanna in the Senate, but also, and because of the unfortunate results that followed, so far as Mr. Sherman was concerned.

The latter greatly preferred to remain in the Senate, but Mr. Hanna's ambition could only be satisfied by a seat in the Senate, and President McKinley's obligation to Mr. Hanna could only be discharged by inducing Mr. Sherman to accept the transfer. Senator Foraker states that when he learned from Mr. Hanna of this arrangement he remonstrated to him plainly against the appointment of Mr. Sherman as Secretary of State at that particular time, when we were threatened with complications with Spain and other European nations. He was plainly in failing memory, and while he might go on doing faithful work in the Senate, to put him at the head of a great department, with the work of which he was not familiar, at a critical time, was to subject him to a tax, both mentally and physically, for which he was not able. He failed to convince Mr. Hanna, and he was so impressed with the unwisdom of the proposed plan, that he went at once to Canton and presented the same remonstrance to the President elect, warning him that the appointment might make trouble; but he reports that he found Mr. McKinley thoroughly committed to the plan. (Vol. 3, pp. 499, 500.)

After the new administration went into operation it soon became apparent that the President was largely consulting with the Assistant Secretary of State, Judge Day, on important matters, and Senator Foraker reports that Mr. Sherman began to take offense at his neglect. Nor was it possible to keep the situation concealed from the diplomatic corps; for instance, at the very time that the Secretary of State was assuring the Japanese Minister that the annexation of the Hawaiian Islands was not being considered, the treaty of annexation was being engrossed for signature, and in a few days the Secretary was called upon to sign it. Hence no one in Washington was surprised when, upon the declaration of war with Spain, Mr. Sherman tendered his resignation which was promptly accepted. What passed between him and the President has never been made public; but The Notes reports that though Mr. Sherman continued to reside in Washington until his death, more than two years thereafter, his intercourse with the President and Senator Hanna ceased, and in private conversation he had only bitter words for them. A facsimile letter of Mr. Sherman is reproduced, from which this extract is made:

When he (McKinley) urged me to accept the position of Secretary of State, I accepted with some reluctance and largely to promote the wishes of Mark Hanna. The result was that I lost the position both of Senator and Secretary, and I hear that both McKinley and Hanna are pitying me for failing memory and physical strength. I do not care for their pity and do not ask them any favors, but wish only to feel independent of them, and conscious that, while they deprived me of the high office of Senator by the temporary appointment of Secretary of State, they have not lessened me in your opinion or in the good will of the great Republican Party of the United States. (Vol. 1, p. 508.)

The temper of this letter lends color to the report that flowers sent from the White House to the funeral in Ohio were returned by the family unused.

The part which Mr. Foraker had already taken in public affairs as Governor of Ohio and in national politics, gave him at once a recognized place in the Senate as a ready and forcible debater, and soon after taking his seat we find him occupying a leading part in the discussion of the Spanish situation growing out of the Cuban rebellion. He argued strongly in favor of the recognition of the independence of Cuba, and was finally the author of a series of resolutions which became the basis of our declaration of war against Spain.

In a foot-note to a discussion of the barbarous warfare pursued in Cuba by Spain, reference is made to the new methods pursued in the present war in Europe by the submarines, which he claims cannot change the existing rules of international law. "Hence, if submarines cannot remove non-combatants before sinking their ship, they must not sink it. To hold otherwise is inhuman and in violation of the foundation principles of all law and, therefore, a practice that will never be approved by the civilized peoples of the earth." (Vol. II, pp. 17–20.)

Some discussion is had of the authorship of the so-called Platt Amendment, which virtually places the Cuban Republic under the tutelage of the United States. Mr. Foraker states that the provisions of that amendment were fully discussed in the Senate long before they took shape in the Amendment, and that one of the earliest proposers of it was General James H. Wilson, commanding a department in Cuba during the American occupation, and that to him more than any one else is due the credit for its ultimate adoption.

Senator Foraker was a prominent participant in the discussion which grew out of the independence of Panama and the treaty with Great Britain respecting the Canal. He defended the action of President Roosevelt in securing the independence of the new republic. He was

the author of two important amendments to the first Hay-Pauncefote Treaty: the first declaring the Clayton-Bulwer Treaty superseded, and, second, striking out the clause providing for the adhesion of other Powers. In a letter to President Taft, written after he had left the Senate, he gives an interesting account of how the first treaty, amended by the Senate and rejected by Great Britain, was revived through a confidential conference at the Senator's residence, sought by Mr. Hay, the Secretary of State.

This letter was written to show that it was the intention of both Secretary Hay and the Senators that our Government should be left free to use its discretion as to the fortification of the Canal. (Vol. II, p. 137.)

At the time President Wilson submitted to Congress the question of our right to discriminate in favor of our vessels using the Canal, Mr. Foraker discussed the subject at some length in a public address, taking the position that in ratifying the second Hay-Pauncefote Treaty we supposed we were to be the sole owners of the Canal, and that we had a right, if we saw fit, to exempt our own vessels from the payment of tolls for its use. (Vol. II, p. 144.) He also has made known his views on the Colombian treaty now pending in the Senate. In a letter written in 1914 he says:

I had personal knowledge at the time of their occurrence of all the facts then known, or now known, so far as I am aware, to which this treaty has reference. * * * * * Colombia suffered no injury at our hands, except only such as she brought upon herself by her own unwise and indefensible conduct. To pay her \$25,000,000, or any other sum, would be like submitting to blackmail; and to apologize to her would be an abject national humiliation, for which there is no excuse whatever. (Ib., p. 450.)

While in the Senate, Mr. Foraker zealously supported the annexation of Hawaii to avoid complications with foreign Powers; and for the same reason the treaty for the annexation of the Danish St. Thomas group, which failed of ratification by Denmark. He calls attention to the present importance of the acquisition of the latter, in view of the completion of the Panama Canal and the situation of the European conflict. He points out that if Germany should become dominant in Europe she would overshadow Denmark, and, without directly challenging the Monroe Doctrine, secure control of St. Thomas.

One of the most characteristically independent acts of Senator Foraker's service was his defeat of a bill reported from the Committee on Immigration providing further and more drastic legislation as to Chinese exclusion, a measure which generally found ready support in Congress. Upon examination of the bill he found it in violation of our national obligations and calculated to bring discredit upon us as a nation. Almost single-handed he attacked it in a speech which he says was "one of my most carefully prepared speeches in the Senate." This speech brought to his support such influential Senators as Platt of Connecticut, Hoar, and Cullom, and the bill was finally defeated. Senator Cullom in his *Personal Recollections* writes: "Senator Foraker very well knew that his opposition to this bill would not strengthen him at home, but he disregarded that fact, and opposed it because he believed it was contrary to our treaty obligations."

The general arbitration treaties which Secretary Hay submitted to the Senate awakened in that body as sturdy opposition as the first Panama Canal treaty which preceded them and had a like fate, as they were so amended as to incur Secretary Hay's disapproval. His treatment by the Senate was in his estimation of such a character that he felt it his duty to tender his resignation, which happily the President declined to accept. In his *Notes* Mr. Foraker refers to Mr. Thayer's "Life of John Hay," recently published. Of this book he says

It shows that Mr. Hay was not only pessimistic and opinionated, but full of misinformation and false impressions as to the disposition of the Senate towards himself, for it shows that he somehow got the notion that the Senate was actuated in making its amendments by a spirit of spite and unfriendliness with respect to him, prompted by "ignorance," "incompetence," and almost every other lack of qualification a man blessed with a rich vocabulary and prompted by virulent resentment could name; all of which was very unlike the quiet, urbane and affable Mr. Hay whom I knew. The following extract from a letter he wrote to Joseph H. Choate is a fair sample of numerous others: "It is a curious state of things. The howling lunatics like Mason and Allen and Pettigrew are always on hand, while our friends are cumbered with other cares and most of the time away. 'W' has been divorcing his wife; Morgan is fighting for his life in Alabama; Cullom ditto in Illinois; even when Providence takes a hand in the game, our folks are restrained by 'Senatorial courtesy' from accepting his favors. Last week 'X' had delirium tremens; Bacon broke his rib; Pettigrew had the grippe; and Hale ran off to New York on 'private business,' and the whole Senate stopped work until they got around again. I have never struck a subject so full of psychological interest as the official mind of a Senator."

In numerous other letters Mr. Hay is shown to have spoken in a disparaging way of the Senate as a body, and of Senators individually as incompetents, who are "hostile and actuated by ill-will" towards him personally in dealing with the great international questions presented by the treaty he had framed. In all this he was greatly mistaken. There was never at any time on the part of any Senator of either

party any personal ill-will towards Mr. Hay, of which there was any indication in the Senate.

Mr. Foraker justly remarks, in regard to the differences between Secretary Hay and the Senate respecting the Panama and arbitration treaties: "No argument is needed to establish that the Senate was right and Mr. Hay wrong in both instances when privately he indulged in such outbreaks."

In his twelve years' service in the Senate Mr. Foraker had proved himself to be one of the most valuable members of that body, and his usefulness was conspicuous especially in matters connected with our foreign relations. And yet when he came before the people of his State for reëlection for a third term, he was rejected and forced into retirement from the public service. But this result was brought about by a combination of circumstances which reflected little credit upon 'our democratic system of government. Late in the campaign of 1908 a demagogue of national reputation made a speech in Columbus, Ohio, in the course of which he produced letters between Mr. Foraker and the president of the Standard Oil Company, secured in some surreptitious manner, which with the interpretation put upon them by the speaker seemed to show some kind of improper relation between them. Added to this was a charge that as attorney for certain Cincinnati public service companies he had exerted dishonest influence upon the Legislature of Ohio. Notwithstanding Mr. Foraker met these charges with prompt denials and with proofs of their falsity, which ought to have convinced every impartial voter, they created such a prejudice against him that it was impossible to overcome it in the short time remaining before the. election.

In addition, another important influence was brought to bear against him in this campaign. During his service in the Senate he had found it necessary to take issue with President Roosevelt in some of his measures before Congress, notably the Brownsville Affray. This so irritated the President that he pursued the unseemly course of making a personal attack upon the Senator at a Gridiron Dinner, which the latter resented by a somewhat caustic reply. In the heat of the campaign of 1908 both the President and his candidate for the succession, Mr. Taft, made a discreditable alliance with the demagogues who were fanning into a flame the scandals above mentioned, and these high officials did not hesitate to attack his official integrity, notwithstanding Mr. Foraker had done more than any other person to promote Mr. Taft's public career.

Under such combined opposition Mr. Foraker went down to defeat, and has never again been able to so reëstablish himself before his constituents as to reënter public life. Thus, using the language of Mr. Roosevelt's adherents, was "eliminated" from official service one of the most able and useful statesmen this generation of Americans has produced. His retirement has, however, enabled him to render a last valuable service to his countrymen in these *Notes of a Busy Life*.

JOHN W. FOSTER.

The Silesian Loan and Frederick the Great. By the Rt. Hon. Sir Ernest Satow, G. C. M. G., LL. D., D. C. L. Oxford: The Clarendon Press. 1915. pp. xii, 436.

This celebrated case in international law, the author says in his preface, is mentioned in various historical works and treatises on international law, but the whole facts have never been correctly stated. It is his purpose to give a full and correct statement of the matter. In the first two hundred pages of the book is the author's extended study of the case; and the remaining two hundred and thirty pages of reading matter, comprised in the appendix, contain one hundred and eighteen official documents quoted in full on which the author principally bases his study. They consist chiefly of letters and documents which passed between the English and Prussian Governments and which, the author says, "have, with but one exception, never been printed before." They are drawn principally from the Public Record Office and the British Museum manuscripts. Besides these previously unpublished documents, the author cites many others contained in fourteen well-known collections of memoirs, letters, treaties, etc.

In the first chapter he tells how the Silesian debt originated while Silesia was still a possession of the Emperor, Charles VI, who in 1734 borrowed from English merchants two hundred and fifty thousand pounds for the payment of which he pledged the revenues of that province. The second chapter tells how, after the first Silesian war, when the province was ceded to Prussia, Frederick bound himself to pay to the London merchants the debt which had been secured by its revenues but which still remained unpaid. The third chapter tells of numerous Prussian complaints against the seizure by English privateers of French goods on board Prussian vessels during the war between France and England from 1744 to 1748. Although France and England were actually fighting against each other as allies of Prussia and Austria

respectively, yet theoretically they were not at war with each other. Hence Prussian vessels were nominally neutral and Frederick insisted that enemy goods on neutral vessels should not be seized, unless they were contraband. England refused to admit the principle. All of the remaining chapters, from the fourth to the sixteenth, are devoted to a study of the long negotiations between Prussia and England in an effort to reach a satisfactory settlement of the question.

Frederick had paid only a small portion of the debt due the English merchants before the dispute over the seizures arose. As the prospect of his obtaining for Prussian merchants compensation from England for their losses grew darker and darker he first hinted, then suggested, then threatened that he would confiscate the unpaid portion of the loan due to the English merchants and out of it compensate Prussian merchants for their losses. England pleaded that this would be a violation of good faith in treaties and of the good name of a sovereign, since there was no other security for the payment of a debt owed by a sovereign of one country to individuals of another country. Prussia insisted that verbal assurance had been given by an English Minister, Carteret, that England would not confiscate enemy goods, not contraband, in neutral vessels. Admiralty courts and judicial commissions in both countries investigated the merits of both questions, and memoirs and pro-memoirs passed between the governments.

While negotiations were pending Frederick made four additional partial payments in 1749, 1750, and 1751. But in 1752 he placed an embargo on the forty-five thousand pounds still unpaid. For more than three years matters remained without change. The final amicable settlement was due, not to the merits or demerits of the contentions of either country, or to the concessions made by both, but to the exigencies of the contemporary diplomatic situation.

The Anglo-French commercial and colonial war had begun. Each was searching for allies or for promises of neutrality. Austria had abandoned the English alliance and for years had been drawing nearer to France. Prussia had no desire to renew the former alliance with France. England made a subsidy treaty with Russia to become operative in case Prussia should join France and attack Hanover. Frederick learned of this, and determined to sacrifice something for an understanding with England to render innocuous the Anglo-Russian rapprochement. He promised to accept a much smaller payment than he had been claiming from England in compensation for the losses of his merchants and

did not insist on a formal endorsement of the principle he had been contending for. If England would settle on this basis he would raise the embargo on the unpaid forty-five thousand pounds of the loan and pay also the accumulated interest amounting to about a fourth as much more. England was willing and offered to pay even more than Frederick had said he would be willing to accept, which, however, was still only about two-thirds what he had claimed all along. Twenty thousand pounds was the amount paid by England. In his conclusion the author says:

To the English ministry, as the form of declaration exchanged with Michell did not mention the grounds on which payment was held to be due, the expenditure of so trifling a sum must have seemed a very insignificant price for an alliance which it was expected would protect the king's German dominions from invasion. Moreover, by signing this treaty they stood to save £500,000 a year which they would have had to pay for the Russian auxiliary force, if it had been required to assist in repelling an attack from Frederick. They sacrificed no principle of international law as they conceived it, and their reply to the Prussian arguments had been left without a rejoinder. It is probable that they considered the promises given by Carteret in respect of Prussian ships and cargoes, somewhat without reflection and in ignorance of the practice of English prize-courts, to constitute a debt of honor which they could not ultimately evade. If so, they certainly took a right view. The word of a minister for foreign affairs given to the diplomatic agent of a friendly Power is binding in honor on the government and the nation which he represents.

Simultaneously with this settlement the Convention of Westminster of January, 1756, was concluded, which was the defensive alliance between England and Prussia that ripened the next year into the close offensive and defensive alliance which bound them together against the similar alliance between France and Austria taking shape at the same time.

Students of international law will welcome this full presentation of this famous case that is so frequently cited as a precedent in studies and cases involving the status of enemy goods on neutral ships, the retention of money owed by a sovereign or government of one country to citizens of another as a means of reprisal, and the confiscation or repudiation of public debts. Students of diplomatic history will welcome it for the interesting light which it casts on the triangular relations between Austria, England and Prussia from the beginning of the Austrian Succession War to the beginning of the Seven Years' War.

The author has practically closed his book to a considerable number of readers who might have used it because he has yielded to the temptation, which unfortunately many amateurs especially yield to, of introducing into the body of the page quotations from foreign languages. To be sure not many who are unable to read French or German will care to follow in detail such a technical study in international law or diplomacy; but there may be some. It shows better taste for an author to translate or summarize such statements in the body of his page and, if there is any special significance in the original, quote it in full in the footnotes or appendices. This enables the technical student to get all the value there is in the original and still leaves it possible for the possessor of a single language to follow the thought of the writer. In the case of his lengthy French quotations the author has given a fairly full condensed summary of the thought in his very helpful marginal topics which he supplies opposite his English as well as French paragraphs.

WILLIAM R. MANNING.

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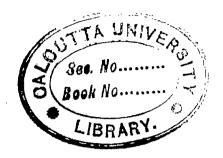
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KATHRYN SELLERS.



THE SALE OF MUNITIONS OF WAR

The rights and duties incident to neutrality is a branch of international law that is of comparatively recent growth. Still the distinction between belligerent nations and neutral nations and between enemy goods and neutral goods has been recognized from quite early times. In the well-known collection of maritime law known as the *Consolato del Mare*, which made its appearance in the fourteenth century, the rule is laid down that enemy goods on neutral ships are liable to capture, but neutral goods on enemy ships must be restored to their owner. This rule evidently assumes also the existence at that time of the belligerent right to visit and search neutral vessels.¹

But it seems that not until the time of Grotius was any attempt made to lay down a rule regarding the duty of neutrals toward belligerents. In his great work published in 1625 he does not, however, use the terms "neutrals" and "neutrality," but in a very brief chapter refers to those whom he calls qui in bello medii. He also was far from recognizing the modern rule of strict impartiality, and distinguished between the obligations of a neutral toward a belligerent waging a just war and one waging an unjust war.² But a far more important distinction drawn by Grotius was that relating to the kind of goods belonging to a neutral which were susceptible of capture by a belligerent. In this he may be said to have laid the basis for the modern law of "contraband"—

¹ "The ancient rule of the Consolato del Mare, in recognizing the right to capture enemy's property on neutral vessels evidently recognizes the belligerent right of visitation and search for the purpose of ascertaining the proprietary interest."—Wheaton, Hist., p. 145.

² "It is the duty of neutrals [qui in bello medii] to do nothing which may strengthen the side which has the worst cause, or which may impede the motions of him who is carrying on a just war; and in a doubtful cause, to act alike to both sides in permitting transit, in supplying provisions, in not helping persons besieged."—De Jure Belli et Pacis, Bk. III, ch. XVII, 3 (Whewell's translation).

though he does not use this term.³ It must be observed that in the first class, which we call "absolute contraband," he includes munitions of war. It must also be observed that the restriction that he places upon the furnishing to a belligerent of articles in this class, is their liability of capture by the belligerent. He thus recognizes the fact that the prevention of the furnishing of munitions of war is a belligerent right and not a neutral duty.

It is to Vattel, however, that we are indebted for the clearest and most explicit statement of the law of neutrality as it existed in the eighteenth century. His book on the Law of Nations was published in 1758. The chief defect in his conception of neutrality was in the approval of a general custom of his time to the effect that a neutral might afford pecuniary or military assistance to a belligerent, provided it was in accordance with a previous treaty stipulation 4—a rule which formerly went under the name of "imperfect neutrality," but which no longer exists. For our present purpose the most significant part of Vattel's chapter on neutrality is that which discusses the status of neutral trade in its relation to belligerent Powers. In the first place, he holds that neutrals are under no obligation to renounce their commerce, even in the matter of furnishing a belligerent with war supplies, provided they are willing to furnish similar supplies to the other belligerent. In the next place, he calls attention to the fact that the carriage of war supplies to one belligerent exposes the owner of the goods to the risk of having his commodities captured by the other belligerent, who has a right to make

³ "But the question often arises, what is lawful [to be captured] against those who are not our enemies, or who do not allow themselves to be so called, but who provide our enemies with supplies of various kinds. * * * In the first place, we must make a distinction as to the things supplied. For there are some articles of supply, which are useful in war only, as arms; others are of no use in war, but are only luxuries; others which are useful in war and out of war, as money, provisions, ships and their furniture."—Ibid, Bk. III, ch. 1, 5.

⁴ Vattel, Bk. III, ch. VII, § 105.

⁵ "It is certain that, as they [neutrals] have no part in my quarrel, they are under no obligation to renounce their commerce for the sake of avoiding to supply my enemy with the means of carrying on the war against me. Should they affect to refuse selling me a single article, while at the same time they take pains to convey an abundant supply to my enemy, with the evident intention to favor him—such partial conduct would exclude them from the neutrality they enjoyed."—Ibid, Bk. III, ch. VII, § 111.

such a capture.⁶ Again, after defining contraband goods as "commodities particularly useful in war," such as arms, ammunition, etc., he states that the means of preventing their transportation to a belligerent to be the confiscation of such contraband goods when captured by the enemy, and asserts that the owner by assuming this risk, thereby forfeits the protection of his own government. Especial attention is called to the fact that Vattel is careful to discriminate between the liability of neutral subjects and the responsibility of neutral governments in the matter of carrying contraband goods, showing, on the one hand, that the confiscation of such goods can give no offense to neutral governments; and, on the other hand, that neutral governments are not held responsible for the carrying of contraband goods by their subjects.8 In the whole of Vattel's treatise there is not a hint that the prevention of the traffic in contraband goods is a duty on the part of a neutral state, but is a matter that affects solely the interests of a belligerent, to whom is given the right of confiscation.

It was the purpose of the publicists of the eighteenth century to pro-

"When I have notified to them [that is, neutrals] my declaration of war against such or such a nation, if they afterwards expose themselves to risk in supplying her with things which serve to carry on war, they will have no reason to complain if their goods fall into my possession. * * * They suffer indeed by a war in which they have no concern; but they suffer accidentally, I do not oppose their right; I only exert my own, and if our rights clash and reciprocally injure each other, that circumstance is the effect of inevitable necessity."—Ibid, Bk. III, ch. VII, § 111.

"But in order to hinder the transportation of contraband goods to an enemy, are we only to stop and seize them, paying the value to the owner,—or have we a right to confiscate them? Barely to stop these goods would in general prove an ineffectual mode, especially at sea. * * * Recourse is therefore had to the expedient of confiscating all contraband goods that we can seize on, in order that the fear of loss may operate as a check on the avidity of gain, and deter the merchants of neutral countries from supplying the enemy with such commodities. * * * On this account [the belligerent] notifies to the neutral states her declaration of war, whereupon the latter usually give orders to their subjects to refrain from all contraband commerce with the nations at war, declaring that if they are captured in carrying on such trade, the sovereign will not protect them."—Ibid, Bk. III, ch. VII, § 113.

⁸ "It has, in perfect conformity to sound principles, been agreed that the belligerent Powers may seize and confiscate all contraband goods which neutral persons shall attempt to carry to their enemy, without any complaint from the sovereign of those merchants; as, on the other hand, the Power at war does not impute to the neutral sovereigns these practices of their subjects."—Ibid, Bk. III, ch. VII, § 113.

tect as far as possible the freedom of neutral commerce, by restricting the belligerent right of capture to contraband articles. But the rules laid down by these writers were often disregarded by belligerent Powers. Nations were seeking to advance their own interests rather than to conform to any legal rules. Hence, the rights of neutral commerce were sought to be protected only by those whose interest it was to do so. In 1780 the alliance known as the "First Armed Neutrality" was formed by several European Powers under the leadership of Russia, professedly to resist the maritime pretensions of England. This alliance was committed to the defense of the following rules: (1) all neutral vessels may freely navigate from port to port; (2) enemy's goods shall be free from capture in neutral vessels, except contraband articles; (3) such contraband articles shall be restricted to munitions of war; and (4) a blockade must be maintained by an adequate force.

It will be seen that these rules were substantially the same as those afterward adopted in the Declaration of Paris in 1856 after; the Crimean War. They were intended to protect the freedom of neutral trade. The commerce of neutrals was to be free from the customary depredations of belligerent Powers. The only restrictions to which neutral commerce should be subject would be the liability to capture and condemnation by a belligerent for the carriage of contraband or the breach of blockade. As contraband goods were made identical with munitions of war, the only restraint upon the exportation of munitions of war from a neutral country to one of the belligerents would be their liability to capture and condemnation by the other belligerent. It was not expected, nor was it indicated in these rules, that any neutral country would be under obligations to prevent the exportation of munitions of war to a belligerent—such an act being treated not as an infraction of neutrality, but simply as an offense against the belligerent, and subject to his condemnation. These rules were not only adopted by the members of the "Armed Neutrality," which consisted of Russia, Denmark, Sweden, Holland, Prussia, Portugal and the Two Sicilies, but also approved by France, Spain, Austria and the United States. By the time of the First Armed Neutrality of 1780 the general law relating to the confiscation of contraband goods had become fairly well established, at least in theory. Although this league was soon dissolved, and its obligations were ignored by some of its members, the adoption of its rules marks a temporary stage in the growth of the modern law of neutrality.⁹

The development of the law of contraband, whereby articles useful in war found in a neutral vessel and destined to the port of one belligerent may be seized and confiscated by the other belligerent, illustrates the inevitable conflict between belligerent and neutral rights in time of war. The belligerent naturally feels that he has a right to conduct the war against his adversary unimpeded by any interference by a third party, that the furnishing of contraband articles to his enemy is such an interference, and should consequently be stopped. The neutral, on the other hand, proceeds on the theory that war represents an abnormal condition; that he should not be compelled to restrict the normal commerce of his own citizens because a war is somewhere in progress; that a commerce which is legitimate in time of peace should not be sacrificed in time of war at the behest of a belligerent Power; that his position as a neutral is not affected provided he is impartial in furnishing supplies to both belligerents; and, finally, that the attempt to regulate the commerce of his own citizens in the interests of either or both belligerents, would involve a responsibility and a burden that, as a neutral, he ought not to be compelled to assume. Here is evidently a conflict of rights claimed respectively by belligerents and neutrals. How shall this conflict be adjusted? Only by some sort of compromise. This compromise has been effected by the practice of nations, which has become an accepted principle of international law. This principle is embodied in the law of contraband. By this law, the neutral nation is under no obligation to place any restraint upon the private commerce of its own citizens in the interests of belligerent parties; but, on the other hand, all neutral vessels are subject to the exercise of the right of visitation and search, and of condemnation if found carrying hostile goods to a hostile destination. However much the list of contraband articles may change from time to time, it always contains as absolute contraband those articles which are classed as munitions of war; so that what may be properly said regarding the sale, exportation, the capture and condemnation of contraband

⁹ Wheaton, Hist., pp. 295–298; Oppenheim, Int. Law, II, pp. 308, 325, 407, 422; Hall, Int. Law, 4th ed., pp. 672–674.

articles, applies to the sale, exportation, the capture and condemnation of munitions of war.¹⁰

At the close of the eighteenth century the practice of nations was by no means uniform, and the law of neutrality was, as a matter of fact. often disregarded. It was the policy of the United States, more than any other single influence, that tended to give definiteness to this branch of international law. In the midst of the European wars that followed the French Revolution, the United States was the chief neutral nation whose commercial rights were placed in jeopardy. The year 1793 may be said to form an epoch in the history of the law of nations. In that year began the series of struggles in which Great Britain and France were the chief belligerents and in which nearly all the countries of Europe became involved; and in that same year was also issued President Washington's famous Proclamation of Neutrality. It is unnecessary to rehearse here the story of the appearance on American soil of the notorious French Ambassador, M. Genet, and his insolent attempts to make the United States the basis of warlike operations against Great Britain; and of the laudable efforts of Washington to resist these attempts. The United States was at that time the youngest nation of the world: but it was yet a nation, with a high sense of honor, and it was the policy of President Washington to maintain the strictest neutrality between the belligerent countries of Europe. In this policy he was ably seconded by his Secretary of State, Thomas Jefferson. To Genet, who was trying to embroil this country in the European war by fitting out privateers on American soil, Jefferson wrote:

It is the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits; and the duty of a neutral nation to prohibit such as would injure one of the warring Powers.¹¹

¹⁰ "The present condition of the carriage of contraband is therefore a compromise. In the interest of the generally recognized principle of freedom of commerce between belligerents and subjects of neutrals, international law does not require neutrals to prevent their subjects from carrying contraband; on the other hand, international law empowers either belligerent to prohibit and punish carriage of contraband in the same way as it empowers either belligerent to prohibit and punish breach of blockade."—Oppenheim, Int. Law, II, p. 432; see also, Hall, Int. Law, 4th ed., pp. 655, 656; Lawrence, Principles, pp. 566, 567; Geo. B. Davis, Elements, 3d ed., pp. 449–453.

¹¹ Mr. Jefferson, Sec. of State, to M. Genet, June 5, 1793. Am. State Papers, Foreign Relations, I, p. 150; Moore, Digest, VII, p. 886.

This single sentence states the fundamental right and the fundamental duty of every neutral state, namely, the right of every neutral state to prevent its territory from being made the scene of hostilities; and the duty of every neutral state to abstain from hostile acts. This statement expressed the policy of Washington's administration.

With reference to the historical significance of this policy, Professor Lawrence says:

These proceedings of the United States [during this period] mark an era in the development of the rights and obligations of neutral Powers. The grounds on which the action of the American Government was based are to be found in the works of the great publicists of the eighteenth century; but never before had the principles laid down by these writers been so rigorously applied and so loyally acted upon. The practical deductions drawn from them by Washington and his cabinet were seen to be just and logical, and the governments of other states followed in their turn the American example.¹²

In the words of another distinguished English writer, Mr. Hall:

The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. * * * In the main it is identical with the standard of conduct which is now adopted by the community of nations. 13

But it is more relevant to our present purpose to call attention to the fact that the United States, at this early date, announced the principle that should guide a neutral nation in respect to the sale of munitions of war. In his Proclamation of Neutrality, published on April 22, 1793, Washington indicated the kind of restrictions to which all trade in contraband goods by neutrals was subject by the law of nations. The words of the proclamation are

that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by com-

¹² Lawrence, Principles, p. 483.

¹³ Hall, Int. Law, p. 616. It may also be noticed that Mr. Canning in 1823, in a speech before the House of Commons against the British Foreign Enlistment Act of 1819, said: "If I wished for a guide in a system of neutrality, I should take that laid down by America in the days of the presidency of Washington and the secretary-ship of Jefferson."—Fenwick, Neutrality Law of the U. S., pp. 27, 28, quoted in Stockton's Outlines, p. 386.

mitting, aiding or abetting hostilities against any of the said [belligerent] Powers, or by carrying to any of them any of those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States against such punishment or forfeiture.¹⁴

Here is clearly expressed the usage of international law, as understood by Washington, that the neutral citizen who engages in the carrying of contraband goods, including munitions of war, to a belligerent, does so at his own risk, and thereby forfeits the protection of his own government. The neutral government is thus supposed to perform its whole duty by acquiescing in the punishment inflicted upon the offending citizen by the belligerent whose interest it is to prevent the carrying of such goods.

An occasion soon arose for a more definite statement of the principle involved than that contained in the President's proclamation. In this same year, 1793, Great Britain, without questioning the legal correctness of the position taken in the proclamation, ventured to suggest that it would be more expedient for the Government of the United States to prevent the exportation of arms than to expose vessels belonging to its citizens to those damages which might arise from their carrying articles of the description mentioned. To this suggestion that the United States prevent the sale of munitions, Jefferson made the following explicit reply:

Our citizens have always been free to make, vend and export arms. It is the constant occupation and livelihood of some of them. To suppress their calling, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal disarrangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent Powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned. 15

¹⁴ Text in Am. State Papers, For. Relations, I, p. 140; also in McDonald, Select Documents, p. 113.

¹⁵ Mr. Jefferson, Sec. of State, to Mr. Hammond, British Minister, May 15, 1793, Am. State Papers, For. Relations, I, pp. 69, 147; Jefferson's Works, III, pp. 558, 560; quoted in Moore's Digest, VII, p. 955.

This communication of Jefferson could hardly leave a doubt as to the policy of the United States regarding the sale of munitions of war during the great conflict then going on in Europe. But within a short time Alexander Hamilton, the Secretary of the Treasury, saw fit to issue a circular containing the following language:

The purchasing within, and exporting from the United States, by way of merchandise, articles commonly called contraband, being generally warlike instruments, and military stores, is free to all the parties at war, and is not to be interfered with. ¹⁶

The question may now arise whether the acceptance of the principle of international law regarding the sale of munitions approved by Washington, Hamilton and Jefferson, in the early history of our country, was not a temporary feature of the first administration; or whether, and how far, it has since been adhered to by the Government of the United States. Mr. Webster, while Secretary of State, was called upon to make a reply to the Mexican Government, which had complained of certain alleged violations of neutrality, on the part of citizens of the United States, in the supply of arms to Texas, then at war with Mexico. Said Mr. Webster:

It is not the practice of nations, to prohibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liability and penalties prescribed by the law of nations or particular treaties. If it be true, therefore, that citizens of the United States have been engaged in a commerce by which Texas, an enemy of Mexico, has been supplied with arms and munitions of war, the Government of the United States, nevertheless, was not bound to prevent it; could not have have prevented it, without a manifest departure from the principles of neutrality, and is in no way answerable for the consequences. * * * Such commerce is left to its ordinary fate, according to the laws of nations. IT

During the Crimean War, in which the allied Powers of Great Britain and France were opposed to Russia, President Pierce had occasion to

¹⁸ Hamilton's Treasury Circular, August 4, 1793, Am. State Papers, For. Relations, I, p. 140; quoted in Moore's Digest, VII, p. 955.

¹⁷ Letter of Mr. Webster to Mr. Thompson, Minister to Mexico, July 8, 1842, Lawrence's Wheaton, p. 813, note, citing Webster's Works, VI, p. 452; also quoted in Geo. B. Davis, Elements, 3d ed., p. 401.

touch upon this subject. In his annual message of December 3, 1854, he declared that

The laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles of contraband of war, or to take munitions of war on their private ships for transportation; and although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the government.

President Pierce illustrated his opinion as follows:

Thus during the progress of the present [Crimean] war in Europe, our citizens have, without national responsibility therefor, sold gunpowder and arms to all buyers, regardless of the destination of those articles. Our merchantmen have been, and still continue to be, largely employed by Great Britain and by France in transporting troops, provisions and munitions of war to the principal seat of military operations; but such use of our mercantile marine is not interdicted either by the international or by our municipal law, and therefore does not compromise our neutral relations with Russia. 18

The Crimean War furnishes an additional instance of the persistence of the United States in holding to its previous policy in regard to the sale of munitions; and it also furnishes an example of the remarkable inconsistency of which Great Britain, one of the Allies, was guilty in this matter. Although receiving herself large supplies of military stores transported in American vessels, the British Government saw fit to charge the United States with violation of neutrality for not preventing the transportation of similar stores to Russia. In reply to this charge, Mr. Marcy, then Secretary of State, was led to administer to Great Britain a well-merited rebuke. In a communication to the British Government (October 13, 1855), Mr. Marcy said:

It is certainly a novel doctrine of international law that traffic by citizens or subjects of a neutral Power with belligerents, though it should be in arms, ammunitions and warlike stores, compromises the neutrality of that Power. That the enterprise of individuals, citizens of the United States, may have led them in some instances, and to a limited extent, to trade with Russia in some of the specified articles is not denied, nor

¹⁸ President Pierce, annual message, Dec. 3, 1854, Richardson's Messages, V, pp. 327, 331; quoted in Moore's Digest, VII, pp. 956, 957.

is it necessary that it should be, for the purpose of vindicating this government from the charge of having disregarded the duties of neutrality in the present war.

Mr. Marcy succeeds in breaking down the British contention, by showing that the Allies themselves had received from the United States supplies of contraband, including munitions of war. He says:

Private manufacturing establishments in the United States have been resorted to for powder, arms and military stores, for the use of the Allies; and immense quantities of provisions have been furnished to supply their armies in the Crimea. In the face of these facts, open and known to all the world, it certainly was not expected that the British Government would have alluded to the very limited traffic which some of our citizens may have had with Russia, as sustaining a solemn charge against this government for violating neutral obligations toward the Allies. 19

But it may still be a question whether the attitude of this government in its early history regarding the sale of munitions of war by its citizens to belligerents, has continued to be the uniform policy of the United States. That this has, as a matter of fact, been the case will be evident from a reference to the following documentary proofs:

During the French invasion of Mexico the Mexican Minister at Washington complained that the exportation, on French account, of military stores was permitted at New York. To this imputation Mr. Seward, then Secretary of State, replied (December 15, 1862):

If Mexico shall prescribe to us what merchandise we shall not sell to French subjects, because it may be employed in military operations against Mexico, France must equally be allowed to dictate to us what merchandise we shall allow to be shipped to Mexico because it might be belligerently used against France. Every other nation which is at war would have a similar right, and every other commercial nation would be bound to respect it as much as the United States. Commerce in that case, instead of being free or independent, would exist only as the caprice of war.²⁰

¹⁹ Mr. Marcy, Sec. of State, to Mr. Buchanan, Minister to England, British and Foreign State Papers, XLVII, pp. 421, 424; quoted in Moore's Digest, VII, p. 957.

²⁰ Mr. Seward, Sec. of State, to Mr. Romero, Mexican Minister, Dec. 15, 1862, Ms. Notes to Mexico, VII, p. 215; quoted in Moore's Digest, VII, p. 958.

President Grant, in his neutrality proclamation of August 22, 1870, during the Franco-German War, expressly declared that "All persons might lawfully and without restriction, by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war and other articles ordinarily known 'as contraband of war," subject only to the risk of hostile capture on the high seas. 21

Secretary Bayard, in reply to a request made by the Haytian Minister at Washington that the United States, on the strength of certain treaty stipulations specifying what articles should be regarded as contraband, should take steps to prevent the exportation of such articles contraband of war to Hayti, said:

It is not unusual to find in the treaties of the United States specifications of what things should be regarded as contraband of war between the contracting parties. Such provisions, however, have never been held to bind either government to prevent its citizens from exporting such things to any other country under any circumstances whatever. The United States have uniformly maintained the position taken by Mr. Jefferson, as Secretary of State, that "our citizens have always been free to make, vend, and export arms." ²²

In 1891 Secretary Blaine was informed by the Chilean Minister that an agent of certain insurgents in Chile had arrived in the city of New York for the purchase of arms and munitions of war; and the request was made to him that the shipment of such articles be prevented by the United States Government. To this request Mr. Blaine replied:

The laws of the United States on the subject of neutrality, * * * while forbidding certain acts to be done in this country which may affect the relation of hostile forces in foreign countries, do not forbid the manufacture and sale of arms or munitions of war. I am, therefore, at a loss to find any authority for attempting to forbid the sale and shipment of arms and munitions of war in this country, since such sale and shipment are permitted by our law.

Mr. Blaine furthermore says:

In this relation it is proper to say that our statutes on that subject are understood to be in conformity with the law of nations, by which

²¹ Quoted in Moore's Digest, VII, p. 973.

²² Mr. Bayard, Sec. of State, to Mr. Preston, Haytian Minister, Nov. 28, 1888, For. Relations, 1888, I, p. 1000; see Moore, Digest, VII, p. 964.

traffic in arms and munitions of war is permitted, subject to the belligerent right of capture and condemnation.²³

A somewhat similar case occurred the next year in connection with Venezuela, while Secretary Foster was at the head of the Department of State. Mr. Foster had occasion to use almost the same language to the Venezuelan Minister that Mr. Blaine had used to the Chilean Minister. He said:

The sale of arms and munitions of war, even to a recognized belligerent, during the course of active hostilities, is not itself a hostile act, although the seller runs the risk of capture and condemnation of his wares and contraband of war.²⁴

Many other citations might be made from official documents similar in import to those given above. But special attention is called to the reply of Secretary John Hay to a complaint made by the Envoy Extraordinary of the Orange Free State to the effect that the English Government was drawing large supplies of material, contraband of war, from the United States. The reply of Mr. Hay is especially significant, not only because it agrees with the uniform opinion of his predecessors, but because it refers to the authorities upon which he based his judgment as to the traditional policy of the United States, and its conformity to the principles of international law. Mr. Hay said:

I have the honor to quote from Kent's Commentaries (I, 142), concerning the well-established doctrine as to the law of nations on this subject. Chancellor Kent said: "It was contended on the part of the French nation in 1796, that neutral governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent Powers. It was successfully shown on the part of the United States that neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent Powers contraband articles subject to the right of seizure in transit.

He continues:

The right has since been explicitly declared by the judicial authorities of this country. Mr. Justice Story in the case of *The Santissima Trinidad*

²² Mr. Blaine, Sec. of State, to Mr. Lazeano, Chilean Minister, March 13, 1891, For. Relations, 1891, p. 314; quoted in Moore's Digest, VII, pp. 964, 965.

²⁴ Mr. Foster, Sec. of State, to Mr. Bolet Peraza, Venezuelan Minister, Sept. 22, 1892, For. Relations, 1892, p. 645; quoted in Moore's Digest, VII, p. 965.

(7 Wheaton, 340), used the following language: "There is nothing in our laws or in the law of nations that forbids our citizens from sending armed vessels as well as munitions of war to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." In the case of *The Bermuda*, Chief Justice Chase said: "Neutrals in their own country may sell to belligerents whatever belligerents may choose to buy. The principal exception to this rule is that neutrals must not sell to one belligerent what they refuse to sell to the other."

Mr. Hay concludes as follows:

An examination of Wharton's Digest of International Law (section 391), will make it clear that the executive departments of this government from the earliest period have maintained the correctness of the doctrine stated by Chancellor Kent, and that, in this position, they have been supported by the decisions of the courts of the United States, and by the opinions of eminent authorities on international law.²⁵

From these excerpts from official documents, it appears that the Government of the United States from the beginning of its history has uniformly held to the doctrine, as consistent with international law, that no neutral nation is under obligation to prohibit the sale of munitions of war to a belligerent Power, but that the penalty of such an act, so far as a penalty is sought, rests entirely in the hands of the offended belligerent. The prevention of the sale and transportation of munitions is, therefore, recognized in international law as a belligerent right, and not a neutral duty.

This, of course, does not mean that a neutral state in its corporate capacity is under no obligations to a belligerent Power. On the contrary, a large part of the law of neutrality, in fact, deals with such obligations. A neutral state, as a state, is obliged by international law not to permit other states to use its territory as a field for military operations, or a basis for the fitting out of military expeditions, or a place for the enlistment of troops. A neutral government is also under obligations not to exercise its corporate authority for the benefit of either belligerent in the way of furnishing supplies or the loaning of money. It is evident

²⁵ Mr. Hay, Sec. of State, to Mr. Pierce, Dec. 15, 1899, MS. Notes to Foreign Consuls, IV, p. 464; quoted in Moore's Digest, VII, pp. 969, 970.

that the relief of neutral subjects from liability to their own government for the carrying of contraband does not relieve the neutral state itself from its obligation to other states.

It should be kept in mind, what seems entirely obvious, that international law lays down the duties which states owe to other states, and not the duties which subjects owe to their own governments—a matter entirely within the jurisdiction of the municipal law. The subject of a neutral state is committing no offense against his own government by the carriage or sale of contraband to a belligerent, and hence is held to no punishment or restriction by his own government. The offense is committed against the belligerent power, and hence the belligerent government only is authorized to punish or prevent the offensive The conduct of neutral subjects within the jurisdiction of their own government is controlled solely by the municipal law of their own government. On the other hand, the punishment of the offenses committed by neutral subjects against a belligerent state is left to the municipal law of the belligerent government. With this matter international law has strictly nothing to do, except so far as the international relation between the states themselves is concerned, in that the neutral state is obliged to acquiesce, within certain limits, with the execution of the law of the belligerent state.26

It will be seen that in the law of neutrality a broad distinction is drawn between the relation of belligerent states and neutral states, on the one hand, and the relation between belligerent states and neutral individuals, on the other. In the one case, the parties are sovereign states, whose duties to each other may be enforced by diplomacy or war. In the other case, one of the parties is a private person, whose liability is, by universal practice, enforced by a penalty imposed by the belligerent state directly upon the individual person by whom the offensive act has been com-

²³ "The carriage of such articles [contraband] by neutral merchantmen upon the open sea is, so far as international law is concerned, quite as legitimate as their sale. The carrier of contraband by no means violates an injunction of the law of nations. But belligerents have by the law of nations the right to prohibit and punish the carriage of contraband by neutral merchantmen, and the carrier of contraband violates, for this reason, an injunction of the belligerent concerned. It is not international law, but the municipal law of the belligerents, which makes the carriage of contraband illegitimate and penal."—Oppenheim, Int. Law, II, p. 431.

mitted. Upon this distinction is based the whole law relating to the carriage of contraband goods. Such acts are incidental to private commerce, and so far as they are offensive they affect directly one or the other of the belligerent Powers only, and not the neutral state to which the trader himself belongs. The punishment of these acts (so far as they may be regarded as penal), is therefore left to the party most interested in seeking a remedy, that is, the offended belligerent, and not the neutral state.

But it is worthy of note that, as a matter of fact, the carriage of contraband by a neutral individual is not regarded strictly in the light of a criminal offense committed with the conscious intent to injure either belligerent. Neither does the method adopted by the belligerent to prevent the carriage of contraband partake of the character of a penalty inflicted upon the person of the neutral trader. In all such cases, the penalty (if it can be properly so called) is restricted to the confiscation of the goods, or of the vessel in which they are carried, or both, or simply to the exercise of the right of preemption. In all cases, the person of the neutral trader is immune, and is not liable to any form of punishment like that of a fine or imprisonment.²⁸

Notwithstanding the fact that the distinction between the liability of a neutral state and the liability of a neutral individual undoubtedly rests primarily upon an historical basis, the effort is sometimes made to explain this distinction upon scientific grounds—with the evident

"This distinction between the usages affecting national and private acts is deeply rooted in the habits of nations. * * * It has been, and still is, usual for [legal writers] to confuse neutral states and individuals in a common relation to belligerent states; and in losing sight of the sound basis of the established practice they have necessarily failed to indicate any clear boundary of state responsibility. This want of precision is both theoretically unfortunate, and not altogether without practical importance. For it has enabled governments from time to time to put forward pretensions, which though they have never been admitted by neutral states, and have never been carried into effect, cannot be often made without endangering the stability of the principles they attack. But the common sense of statesmen has generally met such pretensions with a decided assertion of the authoritative doctrine."—Hall, Int. Law, 4th ed., II, pp. 82, 83.

²⁸ For the penalty for the carriage of contraband, see Oppenheim, Int. Law, II, pp. 441-444; Hall, Int. Law, 4th ed., pp. 690-696; Lawrence, Principles, pp. 617-619; Hershey, Essentials, pp. 501, 502; Stockton, Outlines, pp. 436-440; Woolsey, Int. Law, 5th ed., §§ 197, 198.

intent to justify the maintenance of the custom. With reference to this matter, Mr. Hall has this to say:

An act of the state which is prejudicial to the belligerent is necessarily done with the intent to injure; but the commercial act of the individual only affects the belligerent accidentally. It is not directed against him; it is done in the way of business, with the object of business profit, and however injurious in its consequences, it is not instigated by that wish to do harm which is the essence of hostility. It is prevented because it is inconvenient, not because it is wrong; and to allow the performance by a subject, of an act not in itself improper, cannot constitute a crime on the part of the neutral state to which he belongs.²⁹

This explanation, based upon a difference of intent, may not perhaps seem entirely satisfactory to one who believes that the furnishing of munitions of war by a neutral individual may operate just as injuriously to a belligerent as though they were furnished directly by a neutral state. The effect of the act in both cases may be the same, an injury to the belligerent state. It seems more reasonable to suppose that the distinction was originally due to the instinctive disposition on the part of the offended state to hold immediately responsible the very party who was guilty of the offensive act. In the one case, the act is considered as a public offense, and the sovereign state is held immediately responsible. In the other case, the act is considered as a private offense, and the private person committing the act is held directly liable. In either case, therefore, the offending party-whether it be a neutral state or a neutral individual—is brought face to face with the offended belligerent, and is made directly responsible to him alone for the offense committed. In both cases, the law and international usage have provided a direct and appropriate remedy for the injurious act. In case the act is committed by a neutral state, the law has given to the belligerent the right to hold the neutral government directly responsible for the injury done. In case the act is committed by a neutral individual, it has given the belligerent the right of visitation and search and the right of confiscating contraband goods on the judgment of its own admiralty courts.

The continued maintenance of this distinction is no doubt due to the fact that, while primarly based upon the early practice of nations, it

²⁹ Hall, Int. Law, 4th ed., p. 80.

has been found to be the most expedient way of reconciling the belligerent right to control the methods of warfare and the neutral right to preserve the freedom of commerce. It seems evident that the provisions of international law relating to the transportation and sale of contraband goods, including munitions of war, are in harmony with both expediency and equity. The law, as it exists, confers upon the belligerent state, the party most interested in preventing such acts, the means to prevent them; and it relieves the neutral state, the party least interested in preventing such acts, from the obligation to prevent them. It, furthermore, relieves the neutral state from the difficulty, not to say impossibility, of establishing such a universal system of espionage over its own subjects as shall make their commercial transactions conform solely to the interests of warring Powers. Lord Brougham once aptly said:

No Power can exercise such an effective control over the actions of each of its subjects as to prevent them from yielding to the temptations of gain at a distance from its territory. No Power can, therefore, be effectually responsible for the conduct of all its subjects on the high seas; and it has been found more convenient to entrust the party injured by such aggression with the power of checking them. This arrangement seems beneficial to all parties, for it answers the chief end of the law of nations.²⁰

In spite of the fact that this doctrine conforms to the early practice of European nations, at least as far back as the seventeenth century, and of the fact that it was accepted by the great publicists of the eighteenth century, and also of the fact that it has uniformly been adhered to by the United States during the whole course of its history, and in spite of the further fact that it has been found to be the only expedient way of reconciling the inevitable conflict between belligerent and neutral rights in time of war, there may yet remain a doubt in some minds whether it is still recognized as a part of the law of nations. This doubt should, once for all, be dispelled by reference to the conventions of the Second Hague Conference of 1907. These conventions, so far as they have received the approval of the signatory Powers, must be regarded as the latest and most authoritative statement of the law of nations. In

³⁰ Lord Brougham's Works, Ed. 1857, VIII, p. 386; quoted in Hall's Int. Law, 4th ed., p. 80, note.

two separate conventions there is an express declaration with regard to the duty of a neutral Power in respect to the exportation of munitions of war. In the fifth convention, entitled the Rights and Duties of Neutral Powers and Persons in War on Land, occur these words:

A Neutral Power is not bound to prevent the export or transit, on behalf of one or the other of the belligerents, of arms, munitions of war, or, generally, of anything which can be of use to an army or fleet.

Also, in the thirteenth convention, entitled the Rights and Duties of Neutral Powers in Maritime War, occurs the same statement in identical language.³¹ These conventions, signed by the principal countries of the world, Germany, Austria-Hungary, France, Great Britain, Italy, Japan, Turkey and the United States, express a concurrent opinion as to what constitutes the law of nations in respect to the sale of munitions by neutrals in time of war.

Since the rules of international law are clear and explicit upon this subject, the laying of an embargo upon the sale of munitions of war is sought to be justified upon moral grounds. Notwithstanding the undoubted legal right on the part of a neutral Power to permit the sale of munitions; and notwithstanding the absence of any legal right on the part of a belligerent to demand of a neutral Power to prohibit such sale, it may be yet urged that circumstances may arise in the progress of a war when the continued sale of munitions may work injustice to one or the other of the belligerent parties. In other words, to quote the language of a United States Senator (when the monster petition for an embargo was recently presented to Congress): "It may be all right," he says, "to sell these things according to international law but it is against the moral law." To shift a question of this kind from the domain of law to the domain of morals, opens a wide field for a difference of opinion as to what constitutes a moral international right. It assumes that there exists somewhere some common and accepted standard of

²¹ Convention, V, Art. 7, and Convention XIII, Art. 7,—both signed at The Hague, Oct. 18, 1907. See Pamphlets Nos. 13, 20, Division of International Law, Carnegie Endowment for International Peace; also, James Brown Scott, Texts of the Peace Conferences at The Hague, 1899, 1907. The above named articles are reprinted in Hershey's Essentials, pp. 459, 467; also in Wilson and Tucker's Int. Law, 5th ed., pp. 421, 445.

conduct by which the moral relations of nations may be finally determined. As a matter of fact, so far as any such common standard of conduct may be said to exist, it is already embodied in the law. The law represents the common sense of justice, in so far as the various ideas of a community of persons or of nations have been capable of being put into a definite and corporate expression. The so-called appeal from law to morals may, therefore, mean simply an appeal from a definite and ascertainable body of rules, which represents the organized judgment of a community, to a standard which may be as shifting as the opinions of individuals.

It is true that official protests have sometimes been made on the part of belligerent Powers against the right of neutrals to trade in contraband goods, and especially in munitions of war. 32 Such a protest, of course, comes from a belligerent who is prompted, not by high moral considerations, but solely by motives of self-interest. He hopes by his protest to obtain some military advantage for himself, or to deprive his adversary of some military advantage. The sale of munitions, it is admitted, is legally open to both belligerents; and as long as each has an equal opportunity to purchase, there need be no occasion for complaint. But if one belligerent, by an act of his enemy or other vicissitude of war, finds himself cut off from access to the sea, while his adversary still retains it, he would endeavor to equalize the war situation by seeking to stop all further supply of munitions to his adversary. And, besides this, he would seek to restore himself from a misfortune of war by an appeal to a neutral Power which is in no way responsible for his misfortune. For example, a nation in expectation of a coming war and in preparation for it, has been for many years providing itself with abundant supplies of arms, munitions and other war material, with the intention of surprising its enemy while unprepared for the conflict. It may, perchance, find itself, in the progress of the war, perhaps on account of the superior naval force of its enemy, shut up from ready access to the sea, and estopped from exercising its authorized bellig-

²² "Official protests by belligerent governments against the right of neutral individuals to trade in contraband are heard during nearly every war. This view is also championed by a small band of publicists, notably by Hautefeuille, Phillimore, and Kleen. It is without sanction, either in theory or practice."—Hershey, Essentials, p. 459, note 7.

erent right of intercepting the transportation of munitions. It, therefore, claims that its enemy, which has been inadequately furnished with war material and especially with those munitions necessary to equip an army, should be estopped from exercising its authorized legal right of supplying itself with further munitions.

Such a claim would evidently be based upon the benefit the belligerent hoped to receive by depriving his enemy of the means of defending himself. But this is not all. The right of intercepting the transportation of munitions of war is by law a belligerent right; and the exercise of this right is by law a belligerent act. Being now prevented himself, by a sheer misfortune of war from exercising his own belligerent right and from performing a belligerent act which belongs to himself alone, he would impose upon a neutral Power the obligation of exercising this belligerent right and of performing this belligerent act. thus seek to convert a neutral into an ally. Strictly speaking, the voluntary assumption on the part of a neutral state, in the interests of a belligerent Power, of the task of preventing the legalized traffic in munitions of war, cannot be looked upon in any other light than as a belligerent, or at least an unneutral, act. On the other hand, a protest on the part of a belligerent Power, which seeks to compensate itself for a misfortune of war by demanding the services and intervention of a neutral state, has, in fact, no justification in law or in morals.

The present war has furnished at least two instances of such a protest or appeal delivered to the United States by the Central Powers. The first was contained in a note issued from the German Embassy at Washington, April 4, 1915, and directed to the Secretary of State.³³ Without openly questioning the ordinary application of the rules of international law in permitting the exportation of munitions on the part of neutrals in time of war, the note asserts that on account of existing circumstances, "the conception of neutrality," to quote its words, "is given a new import, independently of the formal question of hitherto existing law." The circumstances to which the note refers are, first, the unusual supply of munitions which is being furnished; and, secondly, the

²³ The German Ambassador to the Secretary of State, April 4, 1915,—transmits memorandum regarding the matter of German-American trade and the question of delivery of arms. See Special Supplement to this Journal, July, 1915, pp. 125–127.

fact that the supply is one-sided, being furnished only to the enemies of Germany. The note, however, makes no mention of the fact that the law, which is admitted to be still in force, contains no discrimination as to the amount of munitions that may be properly furnished to any belligerent; nor does it take notice of the important fact that the onesidedness of the supply is due to no act or fault on the part of the United States, but is due solely to a vicissitude of war. The reply to this note is over the signature of W. J. Bryan.³⁴ In it the Secretary expresses the opinion that this government, in view of the present indisputable doctrines of accepted international law, would regard the course suggested by the German Embassy as "an unjustifiable departure from the principle of strict neutrality, by which it has consistently sought to direct its actions;" and (the Secretary) respectfully submits that none of the circumstances urged in his excellency's memorandum alters the principle involved. To Mr. Bryan and his advisers is due the credit of adhering to the traditional view of the United States upon the matter in hand.

The second note of protest was issued by the Austro-Hungarian Minister for Foreign Affairs June 29, 1915, and was directed to United States Ambassador Penfield at Vienna.³⁵ It practically concedes that the sale of munitions of war is strictly in conformity with the provisions of the Hague conventions; but states the case of Austria-Hungary as follows:

Although the Imperial and Royal Government is absolutely convinced that the attitude of the Federal Government [meaning the United States] emanates from no other intention than to maintain the strictest neutrality and to conform to the letter of the provisions of international treaties, nevertheless, the question arises whether the conditions as they have developed during the course of the war are not such as in effect to thwart the intentions of the Washington cabinet * * * and whether it would not seem possible, even imperative, that measures be adopted to maintain an attitude of strict parity with respect to both belligerent parties.

³⁴ The Secretary of State to the German Ambassador, April 21, 1915,—gives views of U. S. regarding trade between U. S. and Germany and the exportation of arms.—See *Ibid.*, pp. 127–129.

³⁸ The Austro-Hungarian Minister for Foreign Affairs to Ambassador Penfield, June 29, 1915,—asks U. S. to reconsider its attitude on traffic in munitions of war between U. S. and Great Britain and her allies. See *Ibid.*, pp. 146–149.

The note goes on to say:

In reply to possible objections that, notwithstanding the willingness of American industry to furnish merchandise to Austria-Hungary and Germany, it is not possible for the United States of America to trade with Austria-Hungary and Germany, it may be pointed out that the Federal Government is undoubtedly in a position to improve the situation described.

The note suggests that the situation would be improved if an embargo were placed upon the exportation of munitions. The burden of this note, when baldly stated, is that the United States should restore to the Central Powers an advantage they have undoubtedly lost as the result of war by depriving the Allied Powers of an advantage they have undoubtedly gained as the result of war. It thus seeks to "improve the present situation," only so far as the Central Powers are concerned. In short, it calls upon the United States to violate its neutrality and depart from the accepted law of nations, by conferring a special benefit upon one of the belligerents.

The reply to this note was drawn by Secretary Lansing, and dispatched to Ambassador Penfield, at Vienna, August 12, 1915. This reply seems to furnish a complete answer to the position taken by the Austro-Hungarian Government, and to maintain with renewed force the traditional doctrine of international law strictly adhered to by the United States. It is, of course impossible, in this limited space to make even a superficial summary of this able document; and two or three of its main points only can here be noticed. Attention is first directed to the claim that the United States should abandon the long-recognized rules governing neutral traffic in time of war, and adopt measures, in the words of the Austro-Hungarian note, "to maintain an attitude of strict parity with respect to both belligerent parties." Mr. Lansing says:

The recognition of an obligation of this sort would impose a duty upon every neutral nation to sit in judgment on the progress of a war, and to restrict its commercial intercourse with a belligerent whose

¹⁵ The Secretary of State to Ambassador Penfield, August 12, 1915,—instructed to inform Foreign Office of reason the U. S. cannot prohibit trade in contraband. See *Ibid.*, pp. 166–171.

success prevented the neutral to trade with the enemy. The contention of the Imperial and Royal Government appears to be that the advantages gained to a belligerent should be equalized by the neutral Powers by the establishment of a system of non-intercourse with the victor.

The Secretary then calls attention to the attitude of the Central Powers themselves under circumstances similar to those now existing. He says:

During the Boer War between Great Britain and the South African Republics, the control of the coasts of neighboring neutral colonies by British naval vessels prevented arms and ammunition from reaching the Transvaal or the Orange Free State. The allied republics were in a situation almost identical in that respect with that in which Austria-Hungary and Germany find themselves at the present time. Yet, in spite of the commercial isolation of one belligerent, Germany sold to Great Britain, the other belligerent, hundreds of thousands of kilos of explosives, gunpowder, cartridges, shot and weapons; and it is known that Austria-Hungary also sold similar munitions to the same purchaser.

Mr. Lansing thus indicates that the past practice of the Central Powers does not sustain their present contention. He also shows that

The general adoption by the nations of the world of the theory that neutral Powers ought to prohibit the sale of arms and ammunition to belligerents would compel every nation to have in readiness at all times sufficient munitions of war to meet any emergency which might arise, and maintain establishments for the manufacture of arms and ammunition sufficient to supply the needs of its military and naval forces throughout the progress of a war.

Such a practice he says, "would inevitably give the advantage to the belligerent which had encouraged the manufacture of munitions in time of peace" and that "the adoption of this theory would force militarism on the world." He closes his argument with these words:

The principles of international law, the practice of nations, the national safety of the United States and other nations without great military and naval establishments, the prevention of increased armies and navies, the adoption of peaceful methods for the adjustment of international differences, and, finally, neutrality itself, are opposed to the prohibition by a neutral nation of the exportation of arms, ammunition, or other munitions of war.

In summing up this discussion I think it has been shown: (1) that notwithstanding the comparatively recent development of the law of

neutrality, the custom of regarding all neutral commerce as free, subject only to the belligerent right of confiscation in the case of hostile goods with a hostile destination, has existed at least from the seventeenth century.

- (2) That this custom has been recognized by the Government of the United States as a rule of international law from the very beginning of its history until the present time.
- (3) That this custom is a part of the general law of contraband, which is based upon the fact that the transportation of munitions of war is injurious only to one or the other of the belligerents, upon whom is conferred the legal means to prevent it; and is in no sense an injury to neutral states, which are therefore relieved from the obligation to prevent it.
- (4) That the fact that one of the belligerents has, by a misfortune of war, been deprived from exercising his own belligerent right of intercepting contraband goods on their way to his enemy, does not justify the assumption of this belligerent right by a neutral Power for the sole benefit of the unfortunate belligerent.
- (5) That the placing of an embargo on the sale of munitions of war under such circumstances would have the effect of assisting one belligerent at the expense of the other, and hence would be an unwarrantable interference with the progress of the war, and expose the neutral Power laying such an embargo to the charge of unneutrality; and,
- (6) That the abolition of this custom would reverse the concurrent judgment of the world as expressed in the Hague Conventions, would impose new obligations and oppressive burdens upon every neutral state, would work a positive injustice to every country inadequately prepared for war and compel every nation to be sufficiently armed at all times to meet any possible attack,—a condition of things that would lead to a universal state of militancy and prove a misfortune to the world at large.

WILLIAM C. MOREY.

THE LEGALITY OF THE BLOCKADES INSTITUTED BY NA-POLEON'S DECREES, AND THE BRITISH ORDERS IN COUNCIL, 1806-1813

No exhaustive study has, as yet, been made of the Napoleonic era with a view of determining the exact legal status of the blockades established by the British orders in council and the French decrees. It is the purpose of this work to point out the more salient features embodied in the principles of blockade during this period as set forth and laid down by the statesmen of the United States, Great Britain and France, together with their relations to the principles of international law. With this end in view, the treaties, conventions and diplomatic intercourse between the United States and these two foreign countries have been carefully studied. The opinions of statesmen and official legal counsel, as well as the diplomatic correspondence and the decisions of the admiralty courts must be accepted as, in a large measure, establishing the international principles upon which the legality of the various acts may be determined. Court decisions during this period, however, are too much influenced by expediency, made necessary by the demands of the times, to be unconditionally accepted as the last word on the legality of the points in question; but they will nevertheless be freely used.

But before entering into the discussion of the blockade after 1806 it will be necessary, first, to establish the generally accepted definition of what constituted a blockade prior to that time.

I. THE CONCEPTION OF BLOCKADE PRIOR TO 1806

The Russian proclamation of 1780 laid down the definition of a blockade as follows: "That the denomination of a blockaded port is to be given only to one which has the enemy vessels stationed sufficiently near to cause an evident danger to the attempt to enter." ¹ This prin-

ciple seems also to have been adopted quite completely by the British. In 1798, Sir William Scott, of the High Court of Admiralty, in reference to the proclamation of January 1, 1794, placing the French West Indies under blockade, said,

The Lords of Appeal have determined that such a proclamation was not itself sufficient to constitute a legal blockade: it is clear, indeed, that it could not in reason be sufficient to produce the effect, which the captors [of the Betsey] erroneously ascribed to it; but from the misapplication of these phrases in one instance, I learn, that we must not give too much weight to the use of them on this occasion; and from the generality of these expressions, I think we must not infer, that this was not that actual blockade which the law is now distinctly understood to require.²

In the same case he says,

On the question of blockade three things must be proved: 1st, the existence of an actual blockade; 2nd, the knowledge of the party; and 3rd, some act of violation, either by going in, or by coming out with a cargo laden after the commencement of the blockade.³

Again, in 1804 the prize court laid down the rule that, to constitute a blockade, notice to shut up the port should be given, and special notice of blockade must be made to vessels in the neighborhood of the port to warn them off, and that in addition, a force sufficient to enforce the blockade must be stationed near enough to keep all vessels from entering.⁴

These cases point to the acceptance of the principles that blockades must be generally as well as specially notified, and that paper blockades are invalid.

This rule seems to have substantially coincided with that of the French at this period,⁵ and, with the exception of the parts relating to notification, was the definition given in the treaty between Russia and Great Britain in 1801. Article IV of this treaty reads:

² The Betsey, 1 C. Rob. 92a; Scott's Cases, 798.

³ Ibid.

⁴The Nancy, 1 Acton, 57; Scott's Cases, 817. This was, however, a blockade instituted by the commander of the fleet.

⁵ W. E. Hall, A Treatise on International Law, 719.

In order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by disposition of the Power which attacks it with ships stationary or sufficiently near, an evident danger in entering.⁶

That this was also the view of American statesmen as to a valid blockade is shown by the diplomatic correspondence between the United States and Great Britain referring to the proposed treaty of 1806.⁷ But here the discussion centered more upon the question of notification, as this point was not completely covered by the Russian treaty.

In 1799 Sir William Scott decided the case of the Neptunus, in which he held that

The effect of a notification to any foreign government would clearly be to include all the individuals of that nation; it would be the most nugatory thing in the world, if individuals were allowed to plead their ignorance of it; it is the duty of the foreign governments to communicate the information to their subjects, whose interests they are bound to protect.⁸

On first thought it would seem that these decisions are contradictory; but on closer examination it is found that in the case of the *Beisey* the declaration of blockade was made by the commander of the fleet and was not properly notified to foreign governments; while in the latter decision, that of the *Neptunus*, the same justice states the rule as given above. In this case he does, however, recognize that American vessels

⁶ Am. State Papers, For. Rel. VIII, 81. Also in a letter from Mr. Monroe to Mr. Madison, Feb. 12, 1806. The former stated that Mr. Fox "intimated that he had been accused of being too friendly with Americans, and when I spoke of the treaty with Russia, he observed that he had thought the arrangement made by it was a good one."

7 Ibid., For. Rel. VIII, 214.

Mr. Monroe to Mr. Fox, Feb. 25, 1806.

"In respect to neutral rights, it is proposed to adopt between the governments, in such cases as were more liable of abuse, certain principles or rules of conduct which Great Britain had already assented to in her treaty with Russia in 1801. As those Powers had entered into the treaty for the express purpose of defining the law of nations in the cases to which it applied, and Great Britain had adopted its conditions afterwards in separate conventions with Denmark and Sweden, with the same view, it was concluded, that her government would not hesitate to admit its doctrine, or to observe its injunctions with other Powers."

⁸ 2 C. Rob. 110; Scott's Cases, 796.

might have been a long time enroute, and in a position where notification by the government would be quite difficult or next to impossible, and holds that in such cases special notice is necessary. Thus the seeming contradiction of principles is in fact the application of different principles to two distinct cases.

The principle that notification to foreign governments through official channels constituted also notification to their individual merchant vessels became the stumbling block during the negotiations for the rejected treaty of 1806. American statesmen contended that notification of an existing blockade to ministers or representatives of foreign states is not sufficient, and also objected strongly that a blockade should be considered to be still in legal force until rescinded by the instituting government even though the force applied to it was neglecting to enforce it. They also insisted upon direct special notification to American vessels because of the great distance separating the United States from Europe. The treaty as signed by the American agents failed completely on these points. The British agents were also averse to incorporating the article of the Russian treaty into that with the United States, or even to give any concise definition, whatever, of what constituted a blockade. Mr. Madison, in his letter to the American ministers at London said,

The British doctrine of blockades, exemplified by practice, is so different from that of all other nations, as well as from the reason and nature of that operation of war. The mode of notifying a blockade by proclamation and diplomatic communication, of what, in fact, has been done, is more particularly the evil which is to be corrected. Against these nominal blockades the article does not sufficiently close the door.⁹

In July, 1807, the American ministers, Monroe and Pinckney, proposed to George Canning to incorporate the article of the Russian treaty *verbatim* into the treaty, but this the latter refused to do. ¹⁰ In all probability the trend of affairs in Europe influenced the British not to compromise themselves on this point, and caused the Americans to seek so assiduously some acceptable settlement of the difference.

One other point brought out in 1805 must, however, not be omitted. This occurred in connection with the blockade of Cadiz, notified April 25,

⁹ Am. State Papers, For. Rel. III, 170.

¹⁰ Ibid., 195.

1805, after having existed as a *de facto* blockade for some time previous to that date. After the declaration the Spanish vessel *Christina Margaretha* was seized in the British channel by a vessel not of the blockading force, although the prize had left the blockaded port before the official notification. In his opinion, Justice Scott said,

If it is pretended that the seizure was under the notification of the 25th of April, which had intervened before the capture, it would have been prudent to have applied it only to such ships as might be supposed to have received notice of it.¹¹

Out of this seeming conflict of opinion it is very difficult to arrive at the exact status of the rule of blockade. The weight of the opinions would, however, seem to point to the following facts: (1) that a blockade in order to be legal must have sufficient force applied to it to make it dangerous to enter or leave the port; (2) that the Americans demanded direct notification to vessels, while the British held that official notification to foreign governments was sufficient, but allowed a reasonable time in case of vessels at sea which could not be notified by the government before declaring them to be lawful prize.

The French view of legal blockade will be brought out more fully later. Suffice it to say at present that it was somewhat more strict than even the American view.

II. THE NAPOLEONIC BLOCKADES

In order to understand thoroughly the conditions as they existed between 1806 and 1812, it is necessary to recount briefly the principles laid down by the various British orders in council and French decrees.

On May 16, 1806, the orders in council instituting the first blockade of this interesting series were issued. They in substance declared a blockade of the European coast from Brest to the Elbe, but, through a secret understanding with Mr. Fox, it was not to be enforced against Americans except between the Seine and Ostend. The rest of the coast was thus left open to neutral vessels, but only in so far as they were not laden in an enemy port, carried enemy goods, or came directly from an

¹¹ 6 Robinson's Admiralty Reports, 64.

enemy port. The unofficial understanding was acquiesced in chiefly as a favor to Americans, whom Fox strongly favored. It was, nevertheless, a harbinger of evil for the United States, and the government made strenuous and untiring efforts to have the matter definitely adjusted by treaty, the negotiation of which, as before stated, was entrusted to J. Monroe and Wm. Pinckney. The treaty as finally signed by the two Americans, December 31, 1806, was notoriously inadequate in meeting the demands of their government and was not even considered. Further negotiations which took place over the controverted points were soon brought to a close by the decrees of Napoleon, the first of which, the Berlin decree, will now be considered.

The Berlin decree was issued November 21, 1806, as a measure of retaliation for Fox's blockade, the partial enforcement of which Napoleon preferred to overlook, disdaining to receive his supplies through the concessions of his enemies. Among the abuses of international law perpetrated by Great Britain and calling for reprisals, as set forth in this decree, those bearing on blockade play an important part. England is accused of blockading unfortified places, of declaring blockades without ships enough to enforce them and others which she would be utterly unable to enforce, and of seeking to gain commercial advantages over other states through the abuse of a war measure.¹²

From the above note may be derived some of the principles of blockade as understood by the French at this period. The rules there laid 'down were narrowed still more when France claimed to adhere to the

12 Edwards' Admiralty Reports, Appendix to Pt. I, viii.

The statement of the abuses referring to blockade are:

"4. That she extends the right of blockade to commercial unfortified towns, and to ports, harbors, and mouths of rivers, which, according to the principles and practices of civilized nations [as interpreted by France], is only applicable to fortified places.

"That she declares places in a state of blockade before which she has not a ship of war, though no place can be considered in a state of blockade unless it is so invested that approach cannot be attempted without imminent danger.

"That she even declares places in a state of blockade, which, with all her forces united, she is incapable of blockading, namely, whole coasts and empires.

"5. That this monstrous abuse of the right of blockade has no other object than to obstruct the communication of nations with each other, and to raise the trade and industry of England upon the ruin of the trade and industry of the nations of the Continent."

rules of the Peace of Utrecht. In 1809 Count Champagny wrote to General Armstrong,

The right, or rather the pretension of blockading, by a proclamation, rivers and coasts, is as monstrous (revoltante) as it is absurd. A right cannot be derived from the will or caprice of one of the interested parties, but ought to be derived from the nature of things themselves. A place is not truly blockaded, until it is invested by land and by sea; it is blockaded to prevent it from receiving the succors which might retard its surrender. It is only then that the right of preventing neutral vessels from entering it exists; for the place so attacked is in danger of being taken, and the dominion of it is doubtful, and contested by the master of the town and him who besieges it. Hence the right of preventing even neutrals from having access to it.¹³

In how far this view was affected by the general military status of the day, it is difficult to say. One thing is evident, that should such rules have been applied to blockades the advantage would have been entirely on the side of the French and neutrals. It is difficult to conceive that Napoleon would have been so solicitous of the welfare of neutrals had it not, at the same time, been the most advantageous course for France. This principle if put in force would have made it utterly impossible for a nation having control of the sea to enforce a blockade without at the same time having control of the territory of the enemy.

It has ever been the custom among nations to make reprisals against an enemy when the latter violates any rule of international law. This is the principle upon which Napoleon justified his decrees and Great Britain her orders in council. The injury and discomfiture which such an act brings upon neutrals is generally not given much consideration; but in this case each by shifting the blame upon the other tended, through the severity of the measures which it was forced to adopt, to cause the United States to enter the conflict on either the one or the other side. The rights of neutrals were a serious interference with the free action of the belligerents, and they were subordinated to the purposes of the latter. Whether the one side or the other suffered the more abuse from attack is hard to decide; but it is certain, as will be pointed out, that all recognized and accepted rules of blockade, as at that time understood by either party, were flagrantly violated not only with re-

12 Am. State Papers, For. Rel. III, 325.

spect to belligerents but also with respect to neutrals. The decrees and orders in council were war measures, and, as such, the blow they were intended to deal the enemy must first brush aside the neutral if the latter's rights in any degree might act as a buffer to lessen its effect.

The Berlin decree, therefore, was a measure of retaliation against Fox's blockade. To this end, although the Emperor could not keep a single ship of war on the seas except as a fugitive from his omnipresent enemies, it declared the British Isles in a state of blockade.

In addition to this it proclaimed that:

4. All warehouses, merchandise or property of whatever kind belonging to a subject of England shall be regarded as a lawful prize.

5. Trade in English goods is prohibited, and all goods belonging to England or coming from her factories or her colonies are declared lawful prize.

7. No vessel coming directly from England or from the English colonies or which shall have visited these since the publication of the present decree shall be received in any port.

8. Any vessel contravening the above provision (7) by a false declaration shall be seized, and the vessel and cargo shall be confiscated as if it were English property.¹⁴

From the above extracts it is readily seen how far-reaching the provisions of this decree were. If they were to be literally applied, they would contravene all recognized rules of blockade even to a greater extent than was the case with the order in council that preceded them.

The last paragraph of the first section showed a desire on the part of Napoleon to compromise and lessen the severity of the order if the British would come to the French way of thinking. It reads:

The provisions of the present decree shall continue to be looked upon as embodying the fundamental principles of the Empire until England shall recognize that the law of war is one and the same on land and sea, and that the rights of war cannot be extended so as to include private property of any kind or the persons of individuals unconnected with the profession of arms, and that the right of blockade should be restricted to fortified places actually invested by sufficient forces. ¹⁵

This decree for various reasons was not fully enforced by Napoleon; and for nine months it assumed more the form of a municipal law than

¹⁴ Anderson, Constitutions and Documents, France (Translated by James H. Robinson), 386–387.

¹⁵ Ibid., 386.

of an international order. The manner of enforcement was, however, not inquired into by the British Government, which responded on January 10, 1807, with a second order in council proclaiming on penalty of capture and condemnation that it is

judged expedient to order that no vessel shall be permitted to trade from one port to another, both which ports shall belong to, or be in possession of France or her allies, or shall be so far under their control as that British vessels may not freely trade thereat; and that the commanders of His Majesty's ships of war and privateers have been instructed to warn every neutral vessel coming from any such port, and destined to another port, to discontinue her voyage, and not to proceed to any such port. ¹⁰

This decree would have required actual direct notice to the vessel and was therefore probably within reasonable limits.

This order was followed on November 11, 1807, by a second and more severe order which decreed that France, her allies and colonies, were in state of blockade; made all goods of produce or manufacture of such territory subject to capture and condemnation, unless such trade in them be carried on through British ports; all vessels leaving blockaded ports were subject to capture unless they were destined for a British port; vessels which left port before the issuance of the order must have been notified of the blockade before being captured for violation of it; and vessels carrying French certificates of origin were subject to condemnation.¹⁷

It was held that these measures were justifiable because the neutral states acquiesced in the provisions of the French decree, which, however, seems not to have been the case. In a letter by Pinckney to Madison, November 23, 1807, we read:

The British orders annihilate the whole public law of Europe relative to maritime prize, and substitute a sweeping system of condemnation and penalty in its place. The French decree produces no such change at all in that law. The last was no more than a legitimate, though possibly an ungracious, exercise of the right of local sovereignty; while the former can be referred only to force, and look for the scene of their operation to the ocean.

¹⁶ Am. State Papers, For. Rel. III, 5.

¹⁷ Ibid., 269-270.

Nor can it be shown that knowledge had in any form come to the United States Government of a strict enforcement of the Berlin decree before the issuance of the order in council of November 11th.

So long as the decree was enforced only as a local or municipal law, the United States did not remonstrate because it was not affected by the operation of the act. There was little exchange of notes between France and this country on this subject prior to November, 1807, when the more stringent enforcement went into effect. The position in which American vessels were placed by the contradictory and opposed decrees and orders was very unsatisfactory. They could not touch at France or her allies, and they could not touch at England, nor could they carry either French or British goods without subjecting themselves to capture.

Count Champagny asserted that from the French view the United States was at war with England from the time that the orders in council were issued. France was merely waiting to see whether the United States would declare hostilities or not before enforcing the Berlin decree in its liberal purport. 18

The American Government protested strongly against the application of municipal laws against foreign nations on the high seas, and even showed astonishment at the act of France in her extraordinary declaration when she was without the slightest means of enforcing it.¹⁹ The Emperor's council itself was opposed to extending the execution of the decree, but Napoleon was determined through it to determine the position of the United States in her relations with Great Britain.²⁰

On December 17, 1807, Napoleon met the new British order in council with his famous Milan decree. This decreed that the British orders would have the effect of denationalizing the vessels of all nations of Europe, thus affecting the sovereignty of the states themselves; and

¹⁸ Am. State Papers, For Rel. III, 250.

¹⁹ Madison to Armstrong, Feb. 8, 1808.

[&]quot;That the execution of local laws against foreign nations on the high seas is a violation of the rights of the former and freedom of the latter, will probably not be questioned. A contrary principle would, in fact, imply the same exclusive dominion over the entire ocean as is enjoyed within the limits of the local sovereignty, and a degradation of every other nation from its common rights and equal rank." Am. State Papers, For. Rel. III, 249.

²⁰ Am. State Papers, For. Rel. III, 250.

that all vessels submitting to search or entering British ports become *ipso facto* denationalized and hence are English property; that such vessels are subject to capture as lawful prizes; that all vessels either going to or coming from English ports, colonies or any country in the possession of English troops are lawful prize; that the decree shall not apply to such countries as force England to respect their flags; and that the decree shall be *ipso facto* abrogated and void so soon as the English Government shall abide by the principles of the law of nations.²¹

The enforcement of these blockades seems to have been something just short of legalized piracy. Napoleon could keep but few scattered cruisers and privateers on the seas, with which he now began to prey upon American trade. England's whole navy, large as it was, was notoriously inadequate to maintain a blockade of the European Continent and the French colonial possessions. Seizures by both sides were numerous, and it is small wonder that the United States Government changed from official protest to active measures of defense. The counterstrokes of the belligerents became more destructive to neutrals than to the belligerents. The United States Government sought to protect its commerce against such unlawful spoliation. The reckless Yankee skipper began to trump up various excuses for blockade running, among which some of the most prominent in the British admiralty reports are the "distress of the vessel," "exhausted crews" and "entered to procure a pilot."

The United States Government unofficially ordered American vessels not to speak to British cruisers, but rather to run, upon which Sir William Scott of the British High Court of Admiralty remarked,

If these directions are to be taken in their full extent, as authorizing the masters of American ships to fly from British cruisers, it is a practice which, I venture to say, will be attended with very great inconvenience to American navigation. It must be understood that every commissioned cruiser has an undoubted right of inquiry, and it is not the arbitrary decrees of other belligerents that can abrogate it. On strict principle, to defeat that right by evasion might be as penal as to resist it by force, though it has not been held so in practice.²²

²¹ Anderson, Constitutions and Documents, France, 303–304.

²² The Mentor, Edwards' Admiralty Reports, 208. See also the Arthur, Ibid., 203, and the Elizabeth, Ibid., 198, all decided in 1810.

The reason for these evasions and subterfuges becomes apparent when it is understood that the admiralty court held that, in case a vessel is forced to break blockade out of necessity, such, for instance, as need of repair or stress of weather, and does not deliver its cargo, it is not subject to capture.²⁸

In the case of the *James Cook* the court held that it has been determined over and over again that a ship is not at liberty to go up to the mouth of a blockaded port even to make inquiry; that in itself is a consummation of the offense, and amounts to an actual breach of blockade.²⁴

On December 21, 1807, Congress passed the Embargo Act prohibiting the sailing of any vessel from any port of the United States to any foreign port, except foreign armed public ships and foreign merchant vessels in ballast.

On January 8, 1808, a supplementary act was passed requiring coasting and fishing vessels to give bonds to re-land their cargoes in the United States, and still later (March 13th) the provisions of the act were so extended as to include all vessels whether of the size required for registration or smaller.

As a result of the embargo, Napoleon on April 17, 1808, issued his Bayonne decree directing the confiscation of all American vessels in French ports, or which should arrive in them, reasoning that no American vessel could be on the ocean under the embargo, and that therefore those that pretended to be American were in reality British.²⁵ There was some foundation for his assertion, because the American vessels which evaded the embargo did so often through the use of fraudulent British papers and registers.

The embargo becoming very unpopular with the American people, it was repealed, and in its place was substituted the Non-Intercourse Act, March 15, 1809. This act prohibited all commercial intercourse with Great Britain and France.

This was closely followed (April 26, 1809) by a British order in council

²² The Charlotta, June 20, 1810, Edwards' Admiralty Reports, 252.

²⁴ The James Cook, July 3, 1810, Ibid., 264.

²⁵ Am. State Papers, For. Rel. III, 291.

revoking the orders of the 11th of November, 1807, but declaring in their place a blockade of the ports of Holland, France and Italy. 28

Napoleon now seemed to suffer one of his peculiar changes of front, and in June, 1809, he decreed that inasmuch as the United States had obtained the revocation of the British orders in council of November, 1807, the Milan decree should be withdrawn. In August, however, the Emperor, through another change of policy, issued a secret decree providing for the confiscation of any American ship that should enter the ports of Spain, France or Italy, and to these Holland was shortly added.²⁷

Macon's Bill No. 2 repealed the Non-Intercourse Act and authorized the President to prohibit commerce with either one of the belligerents who should not recede from its policy of war on neutrals before March 3, 1810.²⁸ This re-established freedom of commerce until one or the other of the belligerent states should withdraw its orders or decrees.

Or March 23, 1810, Napoleon issued his Rambouillet decree, as a remonstrance against the acts of the United States, in which he provided: 29

1. That all vessels navigating under the flag of the United States, or possessed in whole or in part by any citizen or subject of that Power, which, dating from May 20, 1809, may have entered or shall enter into the ports of our Empire, our colonies or the countries occupied by our armies, shall be seized, and the products of the sales shall be deposited in the surplus fund.

Vessels charged with dispatches were exempted.

Upon knowledge of this decree, the United States was almost ready to go to war with France; and it was probably the knowledge of lack of preparation which restrained the government from taking the step. The policy pursued by France up to this time was now found to injure that country more than it benefited her, and in August, 1810, Napoleon instructed his Foreign Minister, the Duc de Cadore, to notify the American Minister, General Armstrong, that after November 1, 1810, the Berlin and Milan decrees would cease to operate as far as the United

²⁶ Anderson, Constitutions and Documents, France, 394-6.

²⁷ E. Channing, The American Nation, Vol. 12, p. 243.

²⁸ Ibid., 245

²⁹ Anderson, Constitutions and Documents, France, 396-397.

States was concerned.³⁰ On the same day, however, Napoleon ordered that all American vessels which had arrived at French ports between May 20, 1809, and May 1, 1810, should be confiscated, and that no American ship arriving in a French port before November 1st, should be permitted to discharge its cargo without a license.³¹

Under the provisions of the Duc de Cadore's letter one case, that of the New Orleans Packet, was decided in favor of the United States, and this was now used in an attempt to have the British orders in council repealed. But obtaining no satisfaction from this source, Madison, who took the Duc's letter to mean what it said, on November 2, 1810, issued a proclamation cutting off all commercial intercourse with Great Britain.³²

The British took the view that a decree officially instituted must be also officially revoked, and that the Duc de Cadore's letter was not such official revocation of the French decrees.⁸³ They held also that the British orders would not expire of themselves on the revocation of the French decrees, but were dependant upon special repeal of the government. The authenticity of the Duc's letter was at the time questioned by the British High Court of Admiralty in the case of the Snipe and Others.³⁴

In the case of the Fox^{35} Justice Scott held that the British orders were just, so long as they were retaliatory, but that as soon as they ceased to be retaliatory, they ceased to be just; that, although a state

- ³¹ Channing, The American Nation, 249.
- 32 Ibid., 250.

- ²⁴ Edwards' Adm. Reports, 383-395.
- 36 Am. St. Papers, For. Rel. III, 418 et seq.

³⁰ Letter of the Duc de Cadore. August 5, 1810. Edwards' Admiralty Reports. App., Part I, xxi. "I am authorized to declare that the Berlin and Milan decrees are revoked, and will cease to have their effect from the 1st of November: It being well understood that the English shall revoke their orders in council, and renounce their new principles of blockade, or that the United States will cause their rights to be respected by the English."

¹² "The declaration of the person styling himself Duc de Cadore, imports no revocation; for that declaration imports only a conditional retraction, and this upon conditions known to be impossible to be complied with. It has been urged that the American Government has considered it otherwise, and has so declared it for the regulation of the conduct of the people of that country." The Fox and Others, Edwards' Adm. Reports, 316, decided May 11, 1811.

is never at liberty to apply a rule harsher than that of the law of nations unless through a just provocation as a retaliatory measure, it is the duty of the court to carry out the measure and it is the duty of the state to decide when the provocation ceases. As a result of this decision, 28 vessels, valued at \$254,300, with cargoes valued at \$515,500, were declared confiscated by the British prize courts between June 18, 1811, and July 5, 1811, which probably more than any other circumstance made the breach between the United States and Great Britain irreparable.

On the 28th of April 1811, Napoleon officially revoked the Berlin and Milan decrees in consideration of the fact that the Congress of the United States had on the 2nd of March of the same year ordered the execution of the Non-Intercourse Act against Great Britain which had been proclaimed November 2, 1810, by President Madison, but the operation of which had been postponed.³⁶

This was submitted to Lord Castlereagh by Mr. Russell in proof of the revocation of the French decrees on May 20, 1812, in an endeavor to have the British orders repealed; but it was not until June 23, 1812, that the orders of January, 1807, and April, 1809, were definitely revoked. The repeal, however, came too late, for on June 18, 1812, Congress had declared war upon Great Britain.

III. FINAL SETTLEMENTS

During the negotiations for peace carried on by the American diplomatic representatives at Ghent in 1814, the question of blockades was submitted to the British plenipotentiaries in a project of a treaty of peace (Nov. 10, 1814). This, however, is as far as the matter was carried, as it was declared inadmissible by the British delegates. The provisions contained in this proposed article were, that notification must be made directly to the vessel, and that confiscation should be allowable only upon an attempt to enter the blockaded port after such notification. The proposed definition of blockade was that of the Russian treaty of 1801.

In order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the deposition of *Am. St. Papers, For Rel. III, 432.

the Power which attacks it with ships stationary or sufficiently near, an evident danger in entering. 37

In the final treaty of peace of December 24, 1814, the subject did not even receive mention.

The losses suffered by American merchants through the operation of Napoleon's decrees were kept alive through diplomatic channels under the name of French Spoliation Claims, which were finally settled by the treaty of July 4, 1831. In November, 1816, Albert Gallatin brought the subject before the Duke de Richelieu, but the French Government was compelled in an unofficial way to reject the claims, because of financial and other embarrassment, but it considered this to be in no way an official answer. Subsequent to this the claims were repeatedly admitted by the Duke de Richelieu, Vicount de Montmorency, M. de Villele and Count de le Ferronnays. But the French public officials tried continually to weaken them. Decree through the subject to the subj

Van Buren held

That the present Government of France is, by the established principles of public law, responsible for those acts, is not, at this day, an open question among civilized nations. The consequences of an opposite doctrine would strike at the root of all confidence in the dealings between different nations.⁴⁰

Rives, who negotiated the treaty for the United States, expressed the American point of view when he said:

The Berlin and Milan decrees being gross violations of the public law and faith of treaties [having special reference to the provisions of Articles XII to XXVI of the treaty of September 30, 1800,] are such acts as no sovereign can rightfully perform, and must, therefore, be regarded as null and void.⁴¹

The matter was left to a French commission, which allowed the claims of the United States in the following cases:

1. Sequestration where the property had not been definitely condemned by the Council of Prizes.

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<sup>37</sup> Am. State Papers, For. Rel. III, 739.
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²⁸ Ex. Doc. 147, Vol. 3, p. 51. 22d Cong., 2nd sess., 1832-33.

¹⁹ Ibid., p. 20.

⁴⁰ Ibid., p. 23.

⁴¹ Ibid., p. 76.

- 2. Where the vessels were destroyed at sea.
- 3. Where condemnations which purported to be made by virtue of the Berlin and Milan decrees, in being definitely repealed, were, according to the French Government, to be thenceforth considered as not having existed.
- 4. For all supplies derived from citizens of the United States for debts otherwise due.
- 5. Where the sentences of condemnation gave a retrospective effect to the decrees under which they purported to be made. 42

The payment by France to the United States of the sum of \$5,000,000 in settlement of all the claims as above given settled beyond dispute the illegality of at least certain applications of the French decrees; but, in addition to this, they established their own illegality by outlining as a preface and justification of their being the generally accepted principles of blockade as at that time understood by nations.

ARCHIBALD H. STOCKDER.

42 Ex. Doc. 147, Vol. 3, p. 51. 22d Cong., 2nd sess., 1832-33.

THE NEUTRALITY OF HONDURAS AND THE QUESTION OF THE GULF OF FONSECA ¹

The members of the Central American Peace Conference, held at Washington in 1907, primarily intent upon devising all possible ways and means of maintaining permanent peace in the Isthmus, sought to introduce into the treaties which resulted from the Conference not only those means and recourses which experience had shown would preserve good understanding and harmony among the five states, but, more particularly, they endeavored to find new methods which would strengthen the desideratum of the Conference by eliminating the causes of civil or interstate wars which might in the future occur in the Central American countries.

Naturally, the arsenal to which the Conference had to turn for the new arms to combat the causes of and prevent all war and revolution, could be none other than historical experience and the principles of international law.

The negotiators of the Central American treaties well knew the facilities which the large and sparsely populated Honduranean territory had many times afforded to Central American military leaders to promote revolutions and wars which have laid waste more than one country of Central America. The geographical circumstance that the territory of Honduras occupies a central position between Guatemala, Salvador and Nicaragua, which have been the most warlike in our history, has in no small degree facilitated the development of revolutionary and warlike enterprises, which have used the extensive and uninhabited regions of Honduras as a basis of operations, so to speak. It is on this account that the three most warlike countries have naturally exerted themselves to obtain the alliance, or at least the benevolent neutrality, of Honduras.

Since very early in our independent life, it has been understood that Honduranean territory was something like the political center of gravitation for the forces which have sought to reach an equilibrium in the

¹ Translated from the original Spanish by Pedro Capó-Rodríguez.

different historical combinations of the Central American balance of power, and hence those forces have always attempted to obtain such support as that center of gravitation offered to them, whether by means of an alliance with the Government of Honduras, or by actually seizing a central strategical and political point within its territory.

This happened in the first and most disastrous Central American war, which extended from the fateful decree of October 10, 1826 to the occupation of Guatemala in 1829, when the servile party which defied Central America, undertook, as its first and principal measure, to organize the Milla expedition against Comayagua, with the historical and false pretext of the tobacco of the Llanos.

It is to be noticed that in the principal campaign developed against Salvador, which openly opposed the Guatemalan policy of 1826, the party which won at Arrazola and besieged San Salvador always considered that the auxiliary and joint campaign which it undertook against Honduras would exert a very powerful influence upon the final result of the war against Salvador. An evident proof of that political and military view of the servile party, is that the expedition of Colonel Domínguez was detached from the Mexican general headquarters and sent against the eastern departments bordering on Honduras. Upon his triumph at Trinidad and Gualcho, the great Morazán, who was born in Honduras, very clearly demonstrated as a maxim of Central American military history, that in order to insure the result of a campaign of Guatemala against Salvador, and vice versa, it is necessary to count upon the alliance or the strict neutrality of Honduras.

Subsequent wars but confirmed this political and military axiom, which constitutes one of the laws of our history. In 1876, the victory of Apaneca and its logical consequence, the lifting of the siege of Ahuachapán, would have decided the triumph of the Salvadorian arms, if the battle of Pasaquina, the work of the complicity of Honduras, which was made the base of operations of the Guatemalan army of Solares, had not compelled the Government of Salvador to capitulate.

It has also been seen that since 1894 the alliance between Honduras and Nicaragua constitutes a constant peril to the security of Salvador and Guatemala, when the question is viewed from an opposite military standpoint.

Consequently, the historical and military law which we have just mentioned, was impressed with all the force of established tradition upon the minds of the negotiators of the treaties of Washington, and they naturally had to solve the problem of Central American peace, for the consolidation of which they had been delegated, by maintaining unimpaired the military and political balance in Central America through a diplomatic and juridical combination that should always keep free the common center of gravitation upon which the politics and tranquility of Central America turns. Such a combination, from a diplomatic and juridical point of view, could not be other than the permanent and effective neutralization of Honduranean territory in Central American conflicts.

This solution of the problem appeared so natural and so feasible to the Central American negotiators that the doctrine of the permanent neutrality of Honduras was welcomed by all with marked good faith and sympathy. And the North American statesmen who were interested in the success of the Central American conferences quickly realized the transcendent efficacy of such a combination of Central American politics and welcomed it with eagerness as an excellent and happy solution of the pacific idea which the Central American Conference was called upon to realize.

From this community of ideas and from these historical facts which are traditional with the Central American people, sprang the civilized and peaceful idea of creating a buffer, physical, moral and political, by declaring Honduranean territory inviolable for war purposes and by preventing its government from intervening in or favoring the Central American contentions which have so much flourished on its soil.

In order to realize this great thought of the permanent neutrality of Honduras there remained only to find a formula that should not offend the dignity of Honduras and that should conform to the principles of American public law.

This formula was easily found by the Conference. It was said that, if, by virtue of the sovereign right which every people has to dispose of its own destiny, Honduras should herself voluntarily declare her perpetual neutrality, the honor and integrity of the Honduranean state would be perfectly preserved; and it was also suggested that if all

the other Central American states should in response to such a declaration, pledge themselves to respect the permanent neutrality of Honduras and not to violate her territory in any case, there would be found, through such a diplomatic circumlocution, a happy formula that would without detriment to anyone consecrate the fundamental and categorical principle of the perpetual neutralization of the Republic of Honduras.

Such was the origin and such must be and is the spirit and scope of the principle of the permanent neutrality of Honduras, expressly established in Article III of the General Treaty of Peace and Friendship, concluded at Washington, on December 20, 1907, by the plenipotentiary delegates of the five Republics of Central America.

The terms of this stipulation are as follows:

ARTICLE III

Taking into account the central geographical position of Honduras and the facilities which owing to this circumstance have made its territory most often the theater of Central American conflicts, Honduras declares from now on its absolute neutrality in event of any conflict between the other Republics; and the latter, in their turn, provided such neutrality be observed, bind themselves to respect it and in no case to violate the Honduranean territory.

The meeting of the minds and the assent of the state which declared its permanent neutrality and of the four states which accepted it and engaged to respect it and not to violate its territory, give rise to a legal, perfect and clear contract, having all the juridical effects which are derived from a state of conventional and permanent neutrality, in accordance with the principles of international law which govern and regulate the permanent neutrality of states. It cannot be understood nor even conceived, that, in a bilateral, mutually obligatory and solemn contract, such as a public treaty or a diplomatic agreement must be, two or more states should engage in the unusual task of making abstract declarations, without juridical consequences of a binding and practical value. Although the form of such declarations may not be, as it is in this case, so peremptory and indubitable, it would always be necessary to give and to attribute to them the proper effects which their juridical nature imports and which their character of a solemn international

agreement implies in conformity with the principles of international law which establishes and regulates, in a clear and positive manner, the rights and obligations which naturally spring and flow from a conventional neutrality freely adopted by a state, in its relations of contractual and positive law with all the other states, for which it creates the legal bonds and relations involved in the status of voluntary and perpetual neutrality.

History and juridical principles jointly show us that the first condition of all neutrality is that the state which desires to occupy such a juridical situation must be firmly determined to remain independent and neutral, that is to say, resolved to protect itself against any attempt at annexation or violation on the part of its neighbors or of a stranger, not to interfere in their disputes, and to observe a strict neutrality and impartiality in all their conflicts.

It seems unquestioned that one of the principal objects of the concept of the idea of permanent neutrality, is to impose upon the states which recognize and guarantee it, the duty to consider themselves isolated or separated by an insurmountable wall around the neutralized territory, and to hold themselves, as it were, at a distance from the strategical points included within the neutral zone which, for that very reason, none of them ought to occupy, nor avail themselves of in any way in order to obtain any advantage over or become a threatening danger to the others.

This rule of equity and impartiality, which is applicable to the guaranteeing states, is equally applicable to those which are friends, allies, protectors of, or in coalition with, any of them, in respect to the others, even in case they have neither guaranteed nor recognized such neutrality, should they attempt to violate it under the cover of any of those which are under obligation to respect it. In a word, what one of the guaranteeing states cannot do by itself, it cannot do by or for another, because the object of neutrality, for the countries which recognize it, is to preserve in the neutralized country such conditions as will insure to all its guarantors and neighbors the absolute security of their boundaries. In this sense neutrality constitutes a more concrete, effective and definite form of the right of self-preservation of nations; a natural and absolute right which gives to conventional neutrality all the value and

efficacy of those treaties the object of which is the sanction of the eternal principles of justice and equity which must govern the relations of nations as well as those of individuals.

The principles of natural law are not the only ones which give support to the real concept of neutrality which I have just mentioned. Positive law, as well as the practice of diplomacy equally, have also always understood it in this manner, ascribing to it a similar nature, sense and scope.

A great statesman and eminent historian, defending in the French Parliament the neutrality of Belgium, which had just been provided for in the Conference of London in 1831, defined thus the scope of the neutrality of Belgium as well as that of Switzerland:

The Alps [said Adolph Thiers in his speech of November 20, 1831] constitute one of the most important parts of the frontiers of Europe. Austria, Germany, Italy and France are not willing to cede them to each other, nor to any of them. What to do then? Nothing can be simpler; they have placed them in trust in the hands of a valorous and prudent people who keep them and who cannot in any event abuse them. That is the object of the Swiss neutrality! * * * In Belgium there is also a portion of the frontiers which neither England, nor Germany, nor France, are willing to cede to each other; such are the shores of the ocean and the mouth of the principal rivers of Europe. That is the object of the Belgian neutrality! * * *

And how right the thought of European diplomacy was in 1831! If the Swiss frontiers had not been neutralized, neither France, nor Austria, nor Germany, nor Italy, would have been able to divert in the present war the great forces which they have not been obliged to place on their Swiss border, and the territory of Switzerland would not be to-day a peaceful and tranquil refuge, in the midst of the great furnace which is consuming the belligerent countries.

But it might be said that Belgian neutrality has been impotent to afford peace and protection to the noble and heroic Belgian people. The universal reproof and condemnation which the cultured world has fulminated against the violation of the guaranteed neutrality of Belgium, is the greatest proof of the efficacy of its establishment, because no sanction is more effective in showing the virtue and efficacy of a principle of justice, than the evils which it occasions and the indig-

nation which its violation and disregard awakens in the human conscience. Had Belgian neutrality been respected, perhaps England would not have entered into the conflict, and the march of events in the great European war would be very different.

That is the reason why publicists agree that a conventional neutrality is not only advantageous and wholesome for the neutralized state, but its consequences must extend, and in effect they do extend, to third parties, since the latter are obliged to respect it, under penalty of bringing against them a coalition of the coguaranteeing states and the violated country. The example which we are witnessing in Belgium is very instructive and suggestive, and demonstrates to us that neutrality is an institution of natural and international law, which humanity has consecrated as one of its greatest triumphs in the field of diplomacy and justice.

It is well known that the Congress of Vienna of 1815, in pursuance of the plan of confining revolutionary France within its ancient boundaries and of establishing in the north, between the ocean and the Rhine, a bulwark against French ambitions, separated Belgian territory from that of France, to which it had been annexed, and, instead of constituting Belgium an independent country, made the grave mistake in order to satisfy the aspirations of England, of annexing the Belgian provinces, considered as vacant territory, to the Dutch Monarchy. As the result of this achievement of English diplomacy Belgium in 1830 threw off the Dutch yoke and provoked a European crisis by upsetting the balance of power established by the Congress of Vienna. Naturally, France lent its support to the subversive movement of the Belgians and threatened to intervene in their behalf if the other Powers which guaranteed the annexation of Belgium to Holland in 1815 should attempt to reëstablish the equilibrium of the treaties. In this way the Belgium revolution for independence was consummated, and England, this time more farsighted and realizing the error of the forcible annexation of 1815, refused all armed support to the King of Holland, under the pretext that it was too late.

Lord Aberdeen, realizing that the integrity of Holland as conceived by English diplomacy, would, if maintained by force, entail grave dangers for the general peace, ingeniously proposed to the Dutch Government to submit the Belgian question to a conference of plenipotentiaries of the five great Powers, which should meet in London. The Dutch Government accepted Lord Aberdeen's scheme demanding only that the conference begin its labors by declaring an armistice between the Dutch armies and the Belgian rebels, which in substance was an implied admission that the treaties of 1815, the only title upon which the reestablishment of Dutch control in Belgium might be defended before the Conference, were invalidated.

As the new alliance between England and France would support the new combination which, by the very nature of things, was imperative, the absolutist Powers which had guaranteed the arrangement of 1815 saw no other way out of the situation than to join in the attitude of the English government. Metternich, who was an indefatigable worker for the preservation of the monument erected by the Congress of Vienna, could do nothing else and confined himself to seeing that the new combination should counterbalance French ambitions, and in order to maintain the balance of power of 1815 that Belgium, if incorporated with France or made only nominally independent, it should never be left in fact under the control of the French Government.

Having arranged an armistice, which was accepted by the belligerents from the first session of the conference, the conference decided to invite the King of the Netherlands to send a delegation to it, in order that Holland might take part in its deliberations, pursuant to Article IV of the protocol concluded at Aix-la-Chapelle on November 15, 1818. In order to keep within the purpose of the conference it was necessary that it should not depart from its fundamental mission by disregarding the interests of Europe, which were necessarily united for the preservation of the general equilibrium. With this purpose in view, the conference, at a session held on December 20, 1830, recognized that the aim of the signatory Powers of the Treaty of Vienna in reuniting Belgium and Holland was the formation and establishment of a just balance of power in Europe for the preservation of the general peace, and as the Belgian revolution showed the inefficacy of such a combination, "the Conference had to discuss and agree upon new and more appropriate and adequate arrangements to combine the future independence of Belgium with the interests and security of the other Powers and with the European balance of power." These facts are sufficient for us to determine the nature of the purposes and the evolutions which they underwent within the conference; which are important in the consideration of the subject of this article.

The Conference of London met upon the initiative of the King of Holland (in reality imposed by England), by virtue of the right which the Congress of Aix-la-Chapelle gave to every sovereign to ask the Powers for their diplomatic good offices, in the absence of material help. By the first resolution of the conference which virtually contained the principle of the separation of the two belligerent countries, the conference substantially assumed the character of a mediation, which the King of Holland had also to accept. By the protocol of December 20, which ended the revolution, the conference quickly assumed the character of a real arbitration.

Assuming thus this important rôle, the conference did not now understand that it must confine itself to the humble task of studying and proposing to the belligerents, for their approval, the most appropriate basis for the solution of the armed dispute between them; but it went further and assumed the character of a court which supremely decides the question in all its details and believes itself entitled to impose its judgment without appeal, as a high European court, upon the contending parties, whose only right was thus reduced to furnish data and express opinions which might enlighten the discussions of the conference.

Whatever the prescriptions of international law may be, diplomatic history teaches us that real mediations, whether in time of peace or in time of war, have almost always assumed the rôle that the Conference of London saw itself soon compelled to take. Such was the mediation which France imposed upon Austria and Prussia at the peace of Nickolsburg, and such was also the mediation which M. Thiers asked at London, Vienna, St. Petersburg, and Florence, in September, 1870, during his painful viacrucis before the European courts.

This is even more important to remember, if we consider that the Central American Conference of Washington had all the characteristics of a mediation between Salvador, Honduras and Nicaragua after Namasigüe and in spite of the change which took place in the system of alliances created between the three belligerents as a consequence of the fall of President Bonilla and the establishment of the new Government at Tegucigalpa.

It is true that the King of Holland and the provisional Belgian Government, protested against the powers assumed by the Conference of London; but it is also true that the latter maintained its right to solve as arbitrators all difficulties presented by the peculiar conditions upon which the separation of Belgium must be effected, whether in respect of the territorial distribution of the new State or in regard to the national debt.

The conclusions of the conference, however, once they had been definitely formulated in respect of the territorial extension of the new Belgian state, the proportion of debts which it ought to assume, and its international legal situation, met with very strong opposition, not only by the Dutch Government, but by the Belgian Government, which the conference had intrusted to Prince Leopold of Saxe-Coburg, whose candidacy for the Belgian crown was successful within the conference owing to the persistent opposition of England to the candidacy of the Duke of Nemours, because he was a son of King Louis Philip and because of the sympathy with which the Belgians had welcomed his candidacy.

It is not relevant to relate the vicissitudes which the principles agreed to by the conference suffered before they were definitively accepted by the contending parties, who repeatedly interposed their vetoes for the purpose of obtaining as many advantages as possible, in accordance with our exclusive interests and ambitions. So far as the purpose of this article is concerned, it is important only to relate the different forms in which the great principle of the neutralization of the new Kingdom of Belgium was formulated in the complex and protracted negotiations during and which followed after the conference until January 29, 1839, when, the conference having again met succeeded at last in having Holland and Belgium accept by solemn treaties the basis formulated by the Conference of London on October 15, 1831.

The permanent neutrality of Belgium assumed two different forms during the first Conference of London. In the treaty concluded by this assembly on January 26, 1831, these two stipulations are found:

Article V. Belgium, within such limits as shall be agreed upon and marked out in conformity with the bases established in Articles I, II

and IV of the present protocol, shall form a perpetually neutral state. The five Powers shall guarantee to her such perpetual neutrality, as well as the integrity and inviolability of her territory within the above mentioned limits.

Article VI. In just reciprocity, Belgium shall be obliged to observe this same neutrality toward the other states and not to commit any act against their internal or external tranquility.

This form of neutrality aroused much turmoil in Belgium for it was believed that it meant an impairment of its sovereignty and an attack upon its internal autonomy.

Subsequently, on June 24, 1831, the conference, which was constrained to change its plans so that Belgium and Holland might accept them, proposed new bases for an arrangement, and wishing to satisfy Belgian public opinion in regard to the question of neutrality, endeavored to destroy its distrusts and apprehensions by means of a new formula. Indeed, the treaty known as the "Seventeen Articles Treaty," gave to the principle of perpetual neutrality a new form, as follows:

Article IX. Belgium, within such limits as shall be marked out in conformity with the principles embodied in the preliminary protocols, shall form a perpetually neutral state. The five Powers, shall, without claiming to interfere with the internal regime of Belgium, guarantee to her such perpetual neutrality, as well as the integrity and inviolability of her territory, within the limits mentioned in the present article.

Article X. In just reciprocity, Belgium shall be obliged to observe this neutrality in respect to the other states and shall not attempt to commit any act against their internal or external tranquility, and shall always preserve the right to defend herself against all foreign aggressions.

According to these diplomatic documents it must be concluded that the principle of perpetual neutrality is not inconsistent with the absolute internal autonomy of the perpetually neutral State, nor with its external liberty. The diplomatic history of Belgium and Switzerland sufficiently establishes this fact. It also must be concluded that a guarantee of neutrality carries with it a guarantee of the inviolability and integrity of the neutralized territory.

Upon the other hand, the guaranteed state must observe constant and absolute neutrality as regards the other states, whether in peace or in war, and, as a corollary of this obligation, it cannot intervene in the internal or external affairs of the other states, this limitation being a natural one derived from the very purpose of perpetual neutrality. Otherwise, the guaranteeing Powers would assume a duty the consequences of which would be at the mercy of the conduct of the guaranteed state, which would be neither just or expedient. Perhaps for this reason, the acquisition of the Belgian Congo was vested in the person of King Leopold, without investing it in the Belgian state, the result thus being a sort of personal union between the two countries. It is just this limitation which constitutes one of the most powerful consequences of the principle of neutralization, both for the neutralized country and for all others concerned, since the inability of the former to mix in such matters within the field of diplomacy and politics of the latter is the best guarantee that the neutralized country will never, nor in any case, assume a position which might be dangerous or compromising for the Powers interested in its perpetual neutrality.

The neutral state, however, always retains the right to defend itself against any attempt or aggression from without; so that it does not relinquish the right to provide the means to protect itself nor anything that may maintain the inviolability of its sovereign rights and the integrity of its domains. This consequence is also very natural and flows spontaneously from the principle of neutralization itself, the supreme purpose of which is its maintenance unimpaired, not only in the interest of the neutralized country, but more especially in the interest of neighbors and guarantors, which is a general interest, and, therefore, humanitarian. Otherwise the political equilibrium could not be preserved, and the states concerned in the neutrality would be obliged for their own preservation and safety, to retain control and supervision over everything that may affect the status and political and juridical situation of the neutralized country.

The neutral state, therefore, does not commit undue acts by entering into closer alliances with its coguarantors, and, in certain cases, even with strangers; provided, however, that the sole and obvious object of such alliances be to secure and guarantee the complete preservation of the legal status of the neutrality agreed upon.

It is for that reason that small consideration was given in the diplomatic world to the charge made by the German Government regarding the alleged Belgian-British negotiations of 1911–1912 for the purpose of concluding a military alliance which, in view of the plain threats of Germany against its stability, should protect and safeguard the neutrality of Belgium. The papers which the Germans say they found in the military archives at Brussels prove nothing against the right of the defense of Belgian neutrality which has so justly and for so long concerned and demanded the attention of England.

On the other hand, Belgian and French military writers had for a long time denounced the impending violations of Belgian neutrality disclosed by the formidable plans of invasion which the Germans were preparing on their frontier bordering on Belgium, in order to pass across the latter in their enveloping march against the French armies. number of years ago the Belgian General Ducarne denounced the apparent intention of the Germans to make Belgian territory a base of operations against France, and the French Generals Langlois and Bonnal made an extensive examination of the suggestive declarations of General Ducarne. The Rhine province bordering on Belgium, which had nearly always been devoid of railroads, was suddenly covered with numerous strategic double tracked railways, upon the left bank of the Rhine, especially in the region of Eifel, in the Nahe valley and on the strategic road Iréveris-Malmédy. Numerous military bridges were built across the Rhine at Cologne, Dusseldorf and Ruhrort, and the military landings in such regions were considerably increased. And then, there was the formidable military camp at Eupen right upon the Belgian border just across from Liege! These facts, already considered as violating the neutrality of 1831, have been abundantly confirmed by the German invasion of the neutral territory itself.

The duty of the neighboring and guaranteeing states must, therefore, be very strict in respect of the drawing of military plans in the proximity of the neutralized territory. And this obligation, which is naturally and necessarily derived from the principle of conventional neutrality and which must be firmly maintained, will give us much light to clear the new juridical situation in the Gulf of Fonseca consequent upon the conventional and permanent neutrality of Honduras and the adjacent seas which are an integral part of it.

As I said before, only eight years afterwards Holland agreed fully

to recognize the political and juridical status of the Belgian territory which because of the rebellion of 1831, the Conference of London had taken away, and the new relations that arose between the two states in consequence of the establishment of the new kingdom in the sui generis form of a state perpetually neutralized. Indeed, on May 14, 1838, Holland declared to the Powers concerned its full assent and unconditional adherence to the territorial and financial conditions which they were pleased to impose upon it, as a result of the formation of the new state, in the treaties of 1831. These treaties were already in force, but only between Belgium, on the one hand, and France and Great Britain, on the other, as the only ones which until then had guaranteed the neutrality of the new state. Holland had abstained and her protectors and allies, Austria, Russia, and Prussia, had done likewise.

On December 6, 1838, the second plenary conference met at London, and the plenipotentiaries of the five Powers discussed a protocol in which they declared for the maintenance of the resolutions of 1831, since Holland having accepted them, there was no cause for further abstention on the part of her Allies. Belgium, although protesting because there was thus imposed upon her conditions which she might have repudiated on account of the previous abstention of Holland and her Allies, was, however, because of the failure of her allies, France and England, this time to give her their support, constrained to accept as a whole the arrangement of 1831 imposing upon her financial and territorial sacrifices. It thus happened that on April 19, 1839, the five Powers were able to arrange a treaty with Holland and another with Belgium. As an annex to these two, a third treaty was also arranged and concluded between Belgium and Holland as a substitute for the treaty of November 15, 1831, which was repudiated by Holland and not ratified by Austria, Russia and Prussia in consideration of the attitude of the King of Holland.

The principle of perpetual neutrality assumed a more concise and brief form in the principal treaty of April 19, 1839, which was concluded between the five Powers and Belgium, but the contents of which comprise the whole doctrine of neutrality and all the legal and political effects which are inferred from it, as we have just shown.

Article VII of that diplomatic instrument is as follows:

Article VII. Belgium, within the limits specified in Articles I, II, and IV, shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all other states.

Such is the existing stipulation between England, France, Austria, Prussia (now Germany), Russia and Belgium, relating to the neutrality of the latter.

Upon examination it will be seen that this formula does not substantially differ from the one chosen by the Central American Conference of Washington in regard to the neutrality of Honduras. Belgium, within her new boundaries, shall constitute an independent and perpetually neutral state, according to the declaration made by the Conference of London in 1839; Honduras declares from now on its absolute neutrality in event of any conflict between the other republics, reiterates the Central American Conference of 1907. Both declarations are juridically identical and must produce equal results. To declare a state perpetually neutral, is substantially the same thing as to declare it henceforth absolutely neutral in the event of any conflict. The first duty of a neutralized state is to observe its neutrality towards all the other states, so that, if this condition should fail, all the other states would be discharged from the neutrality pact and would be under no further obligation to respect it. This declaration implied in the Belgian neutralization treaty, was declared expressly in that of Honduras: the other Central American states, if Honduras observes her neutrality, obligate themselves to respect it and in no case to violate the Honduranean territory. In both cases the juridical principle appears that the obligation of one of the contracting parties is the legal consideration and reason for the obligation of the other contracting party.

Now then, the principles and doctrines governing Belgian neutrality, are perfectly applicable to Honduranean neutrality.

In the Franco-Prussian War of 1870, before and after the opening of hostilities, the British Government, constantly mindful of Belgian neutrality, obtained the repeated declarations of the belligerents that they would respect that neutrality at all events. In the present war, England finally entered the contest only after Germany had invaded Belgian soil.

The military conversations of England and Belgium, which Germany has denounced, were intended to provide against the possible violation of Belgium by the Germans in pursuance of their military undertakings upon the Belgian frontier. Moreover, every threatened violation of neutral territory gives to the guarantors or endangered states, including the guaranteed state, the right to oppose the action which threatens eventually to involve a violation of neutrality. Neither France nor England would have ever permitted—if they could prevent it by force —any government whatever, even in concert with Belgium, to use the territorial waters of Belgium for permanent military establishments that might become an impending danger to the neighboring states. For that reason, undoubtedly, the Powers which in 1831 effected the neutrality of Belgium, destroyed, in the limitation imposed upon it, the artificial and strategic frontier which Belgium possessed, in consideration of the fact that the guarantee of the Powers was a sufficient pledge to secure the independence and neutrality of Belgium. The dismantling of those frontiers was the price which France exacted for the refusal of the Belgian crown to the Duke of Nemours. For that purpose there was signed between Belgium and the Powers represented at the Conference the Convention of December 14, 1831, stipulating the Belgian fortresses which were to be demolished, because of their uselessness in consideration, says the preamble of "the present state of Belgium, and the changes effected in the relative position of that country, by its political independence, as well as by the perpetual neutrality which has been guaranteed to it." Thus every military undertaking on the part of the neutralized country that may endanger its neutrality, in the interest of all those concerned therein must be strictly forbidden.

The reason of it all is that neutrality, as in the case of Belgium, may be imposed upon certain states which are in need of it for the interest of the others, as was the case in respect of Belgian neutrality, the guarantee of which was imposed, primarily against the Belgians themselves, in order to prevent them from throwing themselves into the arms of France. Belgian neutrality became, therefore, an advantageous substitute, which marked evident progress in the law of nations, for the system of checks of the Treaty of Utrecht and the annexation of the

Belgian provinces in the Kingdom of the Netherlands by the Congress of Vienna.

The principle that permanent neutralization imposes upon the neighboring states the obligations of not endangering with military works the status created by such neutrality, is specially applicable to the neutralization of navigable waters. The Congress of Paris of 1856 adopted and developed such a principle in the treaty of March 30th, of the same year, and applied it to the neutralization of the Black Sea. Article XI of that treaty,—one of the most perfect and finished instruments ever elaborated by European diplomacy,—contains the following stipulations:

Article XI. The Black Sea is neutralized; its waters and its ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war, either of the powers possessing its coasts, or of any other power, with the exceptions mentioned in Articles XIV and XIX of the present treaty.

Article XIII. The Black Sea being neutralized according to the terms of Article XI, the maintenance or establishment upon its coast of military-maritime arsenals becomes alike unnecessary and purposeless; in consequence, His Majesty the Emperor of All the Russias, and His Imperial Majesty the Sultan, engage not to establish or to maintain upon that coast any military-maritime arsenal.

The idea that the neutralization of navigable waters imposes upon the riparian states the obligation of abstaining themselves from fortifying their coast lines, is so natural and logical that the Powers at the Congress of Paris, desirous of extending to the Baltic Sea the benefits of a neutral peace, but not daring to declare it wholly neutralized, contented themselves with the following stipulations in the special convention concluded for that purpose:

Article I. His Majesty the Emperor of All the Russias, in order to respond to the desire which has been expressed to him by Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, and the Emperor of the French, declares that the Aland Islands shall not be fortified, and that no military or naval establishment shall be maintained or created there.

In the preamble to this convention, it is expressly declared that the contracting sovereigns, desiring to extend to the Baltic Sea that concord so happily reëstablished among them in the Far East, and to consolidate

in this manner the benefits of general peace, forbid the fortification or establishment of naval bases in the said islands. Diplomacy, therefore, has understood that the greatest guarantee of the neutralization of navigable water consists in a strict and absolute prohibition against the erection of fortifications or the creation of military or naval establishments along the coast and other adjacent lands which might endanger or compromise the neutrality sought.

This prohibition must be even more imperious in regard to those waters which, by the very nature of things, must be used in common by two or more sovereign states, as is necessarily the case in the Gulf of Fonseca. The joint ownership which nature herself has established among the riparian states of Nicaragua, Honduras and Salvador, over the navigable waters enclosed between Point Consigüina and Point Conchagua, is so necessary, that it would be materially impossible to determine in a conventional delimitation how far the exclusive control of either of the said countries is to extend over the waters enclosed within the aforesaid headlands.

Community of property in waters is not the same thing as community of property in territories; that is to say, the joint control over waters relates to subjects very different from those to which undivided property in common over lands refers. Thus, for instance, the first kind of community ownership concerns the special uses to which every country devotes its marginal waters,—uses which are very different from those respecting lands where it is comparatively easy to bring about a successful termination of the property in common over them by a material partition subject to mathematical calculations,—while community of property in waters principally refers to uses of navigation and fisheries and, more particularly, to those safety and police regulations which the states must issue and enforce for the protection of their own sovereignty and rights of self-preservation.

The reason why international law has recognized certain portions of the adjacent or territorial sea as under the private control of such nations as are bounded by them, is that such areas of waters, whether navigable or not, are indispensable for the defense of the country, the political security of which would be greatly endangered if it could not exercise its jurisdiction over any particular portion of the marginal waters touching its coasts for the fundamental purposes of its own security and defense. The other uses to which the territorial sea may be put by the state to which it belongs are secondary in importance and would not of themselves justify the exclusive appropriation of the marginal width of adjacent waters, thus withdrawing them from the common ownership of all other states as an exception to the early community of the seas and to the universal freedom of navigation. If the control exercised by independent states should end at the coast line, the security and preservation of nations would be constantly menaced. For that reason undoubtedly the extent of the territorial sea has always been limited to the range of the guns placed on the shore for defense: terra finitur ubi finitur armarum vis. Such has been the universal rule recognized and respected since Grotius and Bynkershoeck down to our own times.

The community of property in navigable waters, that is to say, in straits, gulfs, and bays is, therefore, of a different juridical nature from the community of property in lands, and even from a community in sovereign joint control, in the administration of a country as was formerly the case in Egypt.

Joint control over gulfs and bays, moreover, is exercised more for the purposes of security and defense than for exploitation and utilization for economic purposes, whether individual or collective. It is under just such conditions that the Gulf of Fonseca is situated with respect to the three Central American countries which possess and use it in common.

Such an indivisible community of property, established by nature herself, imposes upon the joint holding states responsibilities and duties which they cannot evade without violating the underlying principles of natural law. The first of these duties is without doubt to refrain from attacking the security of the other co-owners by committing any acts which might jeopardize or even endanger their security or existence. This principle, which is binding on every nation, is more imperative and assumes a more sacred character when the community of benefits and uses which nature has established in the Gulf for the riparian owners, is endangered; for in such a case the principal object to be derived from an indivisible ownership, established by nature herself for

the common benefit of the three co-owners, and not for the exclusive advantage of any of them, is defeated.

It may not be said that the independence and sovereignty of each state bordering on the Gulf of Fonseca, is restricted by the existence of the legal community of property in the Gulf for it is precisely the limit or boundary of the sovereignty of one state of the Gulf which cannot be marked out without prejudice to the others and without an invasion of their rights of security. If, under the pretense of exercising rights of sovereignty, menacing acts were committed by anyone or all of the others, there would result a conflict of fundamental rights which in the nature of things and under the geographical conditions could not be solved for the exclusive benefit of one of them without detriment to the others. The restriction of free action which results from this state of things,—if restriction may be called the enforcement of the moral and juridical axiom alium non leadere—is a limitation by natural law, which places as the limit of the right of every man or of every country the beginning of the right of the other men or of other countries.

In this sense the community of property of the three states over the Gulf of Fonseca involves a very high moral obligation derived from the duty of each of them to refrain from committing any act which might injure its co-owners, even although such an act should be done at a place which may appear to be subject to its exclusive control because of its location within its own territory. Otherwise, there would be established a system of abuses so grave and dangerous for natives and foreigners alike, that it would render intolerable the control of the three countries over the Gulf and easily justify other nations, should they feel so inclined, to consider the waters within the Gulf as lawless territory and liable to be appropriated by anyone who could better control it.

Now then, if the doctrine of an undivided property in common over the Gulf of Fonseca by the three countries to which it belongs sufficiently justifies the right of each to oppose any action by the others which might endanger the security of its existence, such a right should be considered as indisputable when it is considered that Honduras must extend its neutrality to the inner part of the Gulf of Fonseca. From the combination of the two principles,—the principle of community of property and the principle of neutrality,—there then results an unrestricted and absolute right on the part of each of the three countries to prevent the commission of any act by the others in violation either of the community of property or the neutrality of the Gulf. if any given point is not covered by the prohibitions of one principle. it may be covered by the prohibitions of the other. This being so, there is then an inviolable legal status within the Gulf which guarantees the independence, sovereignty and security of each state against any act of the others intended to violate or even threaten it. It is difficult to conceive of the existence of any opposing principle which limits the guaranties established in favor of the three states by the juridical system created by the coexistence of the principles of community of property and neutrality. Such a principle would operate as a destructive element in a system of law which finds its strongest support in the principles of natural law, upon which the community is founded, and in the principles of international law, which sanctions and recognizes neutrality.

It is not conceivable that there should be anyone desirous of destroying the highest rule of law that can be imagined, in order to bring about, under cover of a deceitful and perverted principle of exclusive sovereignty, a situation which would be intolerable and lead to abuse and tyranny to such an extent that they could be restrained only by the rule of force, violence and the sword. Is there any honest and just thinker who could say: Let the rules of law, justice and equity among the states be supplanted by a system of trespassing and violence, or at least of threats, which will give rise to unrest and which will have for its support the most infamous lucre,—a lucre acquired at the expense of the sovereign and sacred rights of nations!

The Central American Conference of Washington was thought to have established, and did actually establish, a rule of international law, founded upon justice and equity, which should tend to perpetuate peace and harmony among the five states. It did not think that its treaties, which fix and settle the juridical relations between them, would permit the coexistence along with the legal status instituted by them of a state of iniquity and disorder at any point within Central American territory sufficient to give occasion to misunderstanding and was among these countries the very thing which the Conference endeavored to eradicate.

It cannot be conceived that in the Central American concert brought into existence by the Conference, there should have been left one place, the Gulf of Fonseca, outside of the principle of justice and right which was believed to have been crystallized in the stipulations of its treaties.

Indeed, in proclaiming the principle of the neutrality of Honduranean territory, the Conference naturally and logically thought that it had for all time eliminated from the Central American equation all disputes arising in respect to such questions as might in any way spring from or relate to the neutralized and guaranteed territory. It must needs have believed that in extending the principle of neutrality to all Honduranean territory, it had introduced a principle of concord and harmony for the pacific solution of all conflicts, including those which might arise in connection with the common waters of the Gulf of Fonseca, where the principle of neutralization would be a check to anarchy, ambition and disorder from whatever quarter they might come. It would have been an idle and useless thing to make an express declaration of that to that effect in the neutrality provisions, because the most common principles upon which the doctrine of neutrality is founded, and which the negotiators could not have failed to keep in mind, establishes, as we have already said, the most beneficent consequences in favor of peace, concord and harmony among states, and for the preservation of the general equilibrium.

But, I might be asked, how far does the neutralization of the Gulf of Fonseca reach? The neutrality of the waters, islands and coasts of that Gulf reaches and must reach as far as the right of the neutralized state and that of its guarantors reaches to prevent the commission of any acts which might be construed as involving a threat of violation against the neutrality, which was adjusted and concluded by them for the benefit of all and incorporated by the Conference forever into Central American public law as a principle of peace, order and harmony.

Not only in times of peace, but during a war and midst the clash of armies, neutral territory is always and in all cases inviolable. A violation of it may be committed from within or from without the zone of neutralization.

"Belligerents," says Bluntschli, the celebrated Professor of Heidel-

berg University, "are obliged to respect, absolutely, the territory of neutral states. They must abstain from committing any unlawful act against such territory, whatever the circumstances or strategic interests involved may be."

The inviolability of neutral territory was solemnly proclaimed by The Hague Conference in Convention V of October 18, 1907.

Article I. The territory of neutral Powers is inviolable.

Article II. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

If the duty not to violate neutral territory is so strict during war times and during the state of force and violence created by war, can it be permitted during normal times of peace to threaten neutralized territory with impending violations of it. Not at all; for what has been said in regard to neutrality in war is also applicable to neutrality in peace and conventional neutrality, since the latter merely create a status constituted in anticipation of the former.

"When war breaks out between two or more states," says the publicist Andrés Weis, "the Powers which at first are not involved in the conflict, can, as a general rule, decide for themselves as to the attitude which they will observe during hostilities. They usually, according to their own interests, declare themselves in favor of either belligerent or decide to remain neutral, engaging not to give their direct or indirect support to the army entering the field. This abstention, however, is not always voluntarily undertaken: sometimes it is imposed upon them by international treaties which prescribe for this or that state, under all circumstances, except in case of aggression, the strict and uncompromising duty of abstaining in the future from taking part in any warlike enterprise and of maintaining exclusively peaceful relations with its neighbors: such is the concept of perpetual or permanent neutrality."

So that the rules of neutrality in war are applicable to an anticipated or permanent neutrality.

Having thus premised these ample precedents, we are in a position now to assert, indisputably and incontrovertibly, that the establishment of a naval base within the Gulf of Fonseca would constitute a flagrant violation of the permanent neutrality of Honduras and contravene the principles of justice arising from the undivided property in common which the three riparian states have always had over the portion of the common territorial sea enclosed therein *inter fauces terræ*. That a naval base, arsenal or military establishment on the coast constitutes a threat which violates the neutrality of the waters controlled by the military or naval forces of the place where they are located is an incontestable principle of positive international law, as shown by the stipulations concerning the neutralization of the Black Sea and the dismantling of the fortresses of Aland Islands and the prohibition against maintaining any military or naval establishment thereon.

By the proposed convention concluded between Nicaragua and the United States for the establishment of a naval base on the Nicaraguan coast of the Gulf of Fonseca, it is evidently intended flagrantly to violate the principle of Honduranean neutrality and override the juridical system instituted by the Conference of Washington for the preservation of peace, order and harmony among the contracting states.

We do not deem it necessary to insist upon the proof of this thesis, which constitutes the fundamental conclusion of this article, and which is supported by the foregoing propositions. These propositions have been so repeatedly stated by us that we fear we have been guilty of tautology, although it may be, perhaps, excusable in view of the novelty of the thesis and the difficulty of basing it upon ideas which are neither common nor familiar to the majority of readers.

Now then, neither Nicaragua nor the United States of North America could threaten the neutrality of the maritime territory of Honduras, within the waters of the Gulf, nor interrupt the harmony of the status jure which necessarily exists at that point, as a consequence of the undivided property in common over the territorial sea enclosed within the Gulf. That Nicaragua could not violate the principle of Honduranean neutrality would seem unnecessary to prove, since she was one of the countries which discussed, approved and exchanged the conventions of Washington. And since in those conventions the United States of North America, together with Mexico, acted as mediators, a rôle which they had assumed before, they could not violate those conventions either.

In 1907 there broke out a war between the Republics of Honduras and Nicaragua; and Salvador, as the ally of Honduras, was obliged to send an expeditionary column to the fields of Namasigüe. From the beginning of the conflict, President Roosevelt adopted a firm attitude of intervention, first to prevent the war, and after the beginning of hostilities, to put an end to them. The pressure of the American Government was felt by the three belligerents, not only through diplomatic action, but also through the activities of its navy, which furthered the same purpose.

Hostilities being suspended, the Government of the United States of North America took upon themselves the task of reëstablishing peace between the three contending states and, in order that it should not be again disturbed in Central America, the North American Government called the five Central American Republics to a conference, which met at the city of Washington between October and December, 1907.

Acting upon the suggestion of the Department of State, the Central American representatives met at a preliminary meeting, and encouraged by the Presidents of the United States and Mexico, they concluded the protocol of September 17, 1909 for the purpose of holding a Central American Conference. In the protocol it was agreed that, upon a formal invitation of the said Presidents, addressed by them to each of the Central American Republics, there should be held at Washington a conference, and the five Presidents in their turn were to invite the Presidents of the United States and Mexico to appoint, if they should deem it proper, their respective representatives to lend their good and impartial offices in a purely friendly manner toward the realization of the objects of the Conference. It was agreed that until the Conference should meet, the status quo de facto created by the suspension of hostilities should be maintained between the belligerent countries.

Whatever may have been the form of diplomatic circumlocution employed in the protocol of September 17, 1907, in order to permit the intervention of the representatives of the Presidents of the United States and Mexico in the Conference, this diplomatic instrument cannot change the nature nor the character of the intervention assumed by President Roosevelt in the war and in the peace negotiations subsequent to the same. The character of the mediation evidently was

peremptory with certain pretensions, on the part of the representative of the imperialist country which has proclaimed the Monroe Doctrine, to authority to make peace between its turbulent neighbors. That the United States always preserved the character of mediator plainly appears from all the acts connected with the intervention, which were similar, although more imperious, to the attitude assumed by the same administration of Roosevelt in order to bring about peace between Russia and Japan at the Portsmouth Conferences. In view of this circumstance, and since both the representative of the United States and that of Mexico are mentioned in the preamble of the treaties concluded by the conference as declaring that they were present during all its deliberations, it is impossible not to admit the legal rôle of mediators which the Governments of the United States and Mexico actually and effectively assumed in the conference.

Now then, the first duty of a mediator is to see to it that the undertakings in which he intervened are fulfilled, and, therefore, to oppose any acts which might tend to destroy the results of his mediation. From this primary duty is derived another which is no less positive, imperative and necessary, namely, that of refraining from annulling or destroying, by his own acts, the undertakings in which he intervened as mediator. To attempt to do the contrary would be equivalent to breaking the juridical relations which are established between the mediator and the contracting Powers and thus to destroy the moral and juridical purpose of mediation as an eminently humanitarian institution of international law, and to authorize iniquity and perfidy in international relations, because the mediator might, with ulterior purposes, take advantage of the good faith and confidence placed in him by the parties which accept and respect the acts and counsel of his mediation.

The mediator being in a way and to a certain extent the agent of the belligerents, cannot in justice and natural comportment and in keeping with the good faith with which he must always maintain and respect the agreements to the conclusion of which he has contributed with a deliberate and free volition, afterwards attack the work with which he is legally identified.

If the mediator could in this manner withdraw from such agreements, he would infringe upon the principles of equity and justice and would run the risk of the contracting parties holding him responsible for the consequences of his mediation. This is so well settled that the French Government, as the mediator in the peace of Nickolsburg, claimed the right, even for a long time after 1866, to insist upon the stipulations of the arrangement which Bismarck did not keep, especially in regard to the plebiscite of the populations of North Schleswig, concerning its final separation from Denmark and its legal incorporation into Prussia.

In conformity with these principles, which regulate diplomatic mediation between belligerents,—one of the noblest and most useful institutions of international law,—there is no doubt that the United States cannot perform any international act that may menace or nullify the neutrality of Honduras and ignore or alter the juridical status of the Gulf of Fonseca which the treaties of Washington sanction and guarantee. This prohibition against the United States is even more apparent when account is taken of the fact that to obtain the naval base which it is seeking from Nicaragua would compel the latter to break her agreement, and there is no code of ethics that would not reprove the action of a mediator who incites one of the contracting parties to violate the agreement resulting from the mediation.

The most noted publicists are agreed that from the principle of perpetual neutrality flows, as a logical consequence, the obligation of the contracting states efficaciously and effectively to guarantee the neutrality and inviolability of the neutralized territory; not only because such neutralization is in the interest of all, but also because such a guarantee is the correlative obligation of the undertaking assumed by a state to remain always neutral in the contentions and conflicts of the others.

The legal principle that the Republics of Guatemala, Salvador, Nicaragua and Costa Rica have assumed, by virtue of the Treaty of Washington, the character of coguarantors of Honduranean neutrality, may be therefore maintained. This principle might be perhaps equally maintained in respect to the United States as mediator. It would, upon the other hand, be in perfect harmony with the principles upon which the Monroe Doctrine is founded.

As coguarantors of the neutrality of the territory of Honduras all the other Central American states possess the legal capacity to enforce the neutrality which they guarantee. This appears more clearly when it is considered that, if England had a right to declare war against Germany for her violation of Belgian neutrality, she could also have taken her to the Permanent Court at The Hague for any impending violation which might have been previously intended; since, according to the existing arbitration treaties, disputes which may arise from the interpretation of international agreements are susceptible of being arbitrated, and among them naturally are those which arise from the conventional neutrality of Belgium.

Any of the Central American states which guarantee Honduranean neutrality, could undoubtedly institute (since Honduras, on account of her present policy, does not seem to be in a position to undertake it) an action before the Central American Court of Justice against Nicaragua in order that that high tribunal might declare whether or not the proposed naval base which it is intended to establish within the Gulf of Fonseca, constitutes a violation of the neutrality stipulated in the Treaty of Washington, and whether Nicaragua must be responsible for the consequences of the violation, if the convention in which it is proposed should be perfected. The court could not refuse to make a declaration in the form of a judicial judgment, because its mission is precisely fully to maintain the effect, scope and efficacy of the canons of Central American international law, and to protect in all their integrity the rights of the five states which brought the court into existence.

The Nicaraguan Government has never ignored the existence of a sui generis Central American public law, which imposes upon the five states certain rights and duties which are very peculiar in their nature and in their political and juridical effects, and which are now sanctioned by the Treaties of Washington; and the said government, therefore, cannot rationally and in good faith ignore the juridical and political situation of the Gulf of Fonseca, considered as a body of waters belonging jointly and undividedly to the three riparian states.

At the opening meeting of the Fourth Central American Conference, held at Managua on January 1, 1912, the Nicaraguan Minister for Foreign Relations, who presided, admitted in the presence of the delegates of the five Central American nations, the spirit of confraternity which had drawn them together on the beautiful field of peace, and united them by a single aspiration and common sentiment of solidarity,

to carry out the noble work of reconstructing the old mother country. through a spontaneous drawing nearer of the five entities which used to compose it,—"which surely could not happen with the other communities of the world. It may be conjectured," he continued, "what we could be in a short time if, united as we are by the bonds of blood, religion, customs, language and history, and properly forming only one people divided into five small nationalities, we should raise the spirit and heart of our people to those high teachings. * * *" It is impossible not to derive from the close ties between countries which constitute only one people, the existence of a sui generis public law, which imposes upon them responsibilities and duties, which must necessarily restrict the sovereignty of each entity for the reciprocal benefit of the rights of the others, especially whenever a very exceptional territorial situation should establish the solidarity of the countries in such an intimate form as that which springs from the community of interests and rights established by the very nature of things.

The existence of this community of interests and rights in the Gulf of Fonseca has been so clear and evident to the cultivated spirit of Nicaraguan statesmen, that, pretending to disregard it as contrary to their momentary interests, they have attempted in official documents to mix the sovereignty of the five entities in their own exclusive territory with the solidarity and joint sovereignty which Honduras, Salvador and Nicaragua exercise over the waters of the Gulf, enclosed inter fauces terra. To confuse the control of each of these states over their own exclusive territory with the control which they jointly exercise over the Gulf, is to ignore the difference existing between sovereignty over the territorial sea and sovereignty over the high sea, between territorial international law and maritime international law, the principles of which are so different and sometimes so opposite in their nature and character.

Yet such a gross paralogism is the only argument which the Nicaraguan Government has dared to oppose to the doctrine of undivided community of maritime rights of the riparian states on the Gulf of Fonseca. "The mere claim to restrict the legitimate action of Nicaragua over the whole or any part of the territory which belongs to her," says the Nicaraguan Foreign Office, "as a sovereign nation, upon the ground of alleged dangers and of a sui generis solidarity, by which the neighboring country completely and absolutely, and upon that ground, acquired for its own and exclusive benefit inalienable rights of the true owner, is so excessive and beyond every principle of international justice and rectitude, that it cannot be thought for a moment that there should be a people who would be willing to consent to a discussion of such questions under such an aspect." When Nicaragua expressed herself in those terms, it seemed that she entertained the singular illusion of believing herself entirely at liberty to deal with the United States, just as if she had absolutely disregarded the legitimate interests of the other countries and forgotten all that she had herself only a short time ago declared before the representatives of all the Central American States in respect to the Central American people being only one, and as to the existence of a close solidarity and warm and strong sentiments of special confraternity, among the five entities which compose them.

If the indivisible unity of the Central American people exists as a fact verified by history, and as it was declared by the Central American Chancellor of Nicaragua in 1912, it necessarily follows that one of the fragmentary entities could neither dispose of any part of the Central American territory nor jeopardize extensive interests or rights which might greatly affect any of the other fractions.

The Central American solidarity, which was so emphatically proclaimed in the opening address of 1912, is now ignored and repudiated in such undiplomatic terms, merely because it alone constitutes the most eloquent criticism against a government which, to the danger of its neighbors, is bent on bargaining away its autonomy, promising the abandonment of its sovereignty to such an extent that one of the deliberative bodies of the contracting party to be benefited, has refused to accept such a strange *sui generis* liberality. Referring to the exorbitant concessions which the Nicaraguan Government voluntarily proposed to the United States, Senator Root, in a letter published in the Century, has recently given utterance to the following words of honest disapproval:

I confess I am a good deal troubled about it. I felt that it was desirable to do what the treaty provides for, that is to say, to protect our

¹ See article in the *Century* for October, 1915, by Lincoln G. Valentine, entitled "Meddling with our Neighbors," p. 801, at p. 807.—Eb.

Panama Canal by securing an exclusive right to the Nicaragua route so far as the Republic of Nicaragua can grant it, and to have the right to a naval station in Fonseca Bay. I was not in favor of the more extensive provisions originally proposed similar to those in the Platt Amendment, because I considered that they went far beyond the Platt Amendment and unduly interfered with the independence of Nicaragua. I was unwilling to have our government accept from any Nicaraguan Government a grant of power which I felt certain the people of Nicaragua would not and ought not to approve. With those provisions out, however, and nothing left but the grant which I have described, I voted for a favorable report on the treaty.

If, according to Mr. Root, the Nicaraguan Government proposed to that of the United States certain alienations of sovereign rights which no civilized country would part with and which are improper for the government which proposed them, would not such alienations be still more improper in respect to third parties who may be prejudiced in their rights and even in their independence by such concessions? Disregarding many instances to be found in diplomatic history, such as those involving Egypt and the Far East, how can the Nicaraguan Government claim to be ignorant of the danger which the naval base within the Gulf would mean against our autonomy? The fear which the granting of a naval base causes to the other states, is more than sufficient, without considering the duties which Central American solidarity imposes, for Nicaragua to abstain from committing any act which might give rise to fears for the security of her neighbors.

The right of self-preservation is so dominant and strong in nations, that it has always imposed serious restrictions upon the freedom of action of other states. It would be idle to cite the innumerable cases which have enriched the history of international law in which the right of security of one country has imposed very marked limitations upon the right of international liberty of the other nations.

But, without going any further, the soundest and only real foundation of the Monroe Doctrine is the right of security and of self-protection which the United States owe to themselves as an independent nation. In the remarkable paper read by the eminent statesman, Mr. Elihu Root, before the American Society of International Law, entitled "The Real Monroe Doctrine," it was said by him in regard to the foundation of the Doctrine:

The doctrine is not international law, but it rests upon the right of self-protection and that right is recognized by international law. The right is a necessary corollary of independent sovereignty. It is well understood that the exercise of the right of self-protection may and frequently does extend in its effect beyond the limits of the territorial jurisdiction of the state exercising it. The strongest example probably would be the mobilization of an army by another Power immediately across the frontier. Every act done by the other Power may be within its own territory. Yet the country threatened by the state of facts is justified in protecting itself by immediate war. The most common exercise of the right of self-protection outside of a state's own territory and in time of peace is the interposition of objection to the occupation of territory, of points of strategic military or maritime advantage, or the indirect accomplishment of this effect by dynastic arrangement. For example, the objection of England in 1911 to the occupation of a naval station by Germany on the Atlantic coast of Morocco; the objection of the European Powers generally to the vast force of Russia extending its territory to the Mediterranean; the revision of the Treaty of San Stefano by the Treaty of Berlin; the establishment of buffer states; the objection to the succession of a German prince to the throne of Spain; the many forms of the eastern question; the centuries of struggle to preserve the balance of power in Europe; all depend upon the very same principle which underlies the Monroe Doctrine; that is to say, upon the right of every sovereign state to protect itself by preventing a condition of affairs in which it will be too late to protect itself. Of course, each state must judge for itself when a threatened act will create such a situation. If any state objects to a threatened act and the reasonableness of its objection is not assented to, the efficacy of the objection will depend upon the power behind it.2

The right of self-defense, then, justifies the riparian states in opposing the establishment of a station within the Gulf of Fonseca, just as England and France opposed the naval base which Germany proposed to establish at Agadir, even although that place is quite distant from the French and British Moroccan possessions, while the coasts and islands possessed by Salvador and Honduras within the Gulf of Fonseca are within the range of artillery from the Nicaraguan shores where the naval base sought by the United States would be established.

The Governments of Honduras and Nicaragua, like the Sultan of Morocco, do not seem to have seriously regarded the establishment in their vicinity of a naval base by one of the most powerful nations which

² Proceedings of the Society for 1914, pp. 11-12. Ed.

will be equivalent to the creation of a military force so powerful that in time of peace it will restrict the rights of police and free navigation of the riparian and even foreign countries, and, in time of war, it must necessarily infringe upon the freedom of action of both natives and foreigners within the extensive zone in controversy, as far as the military power and the menace of the naval establishment proposed by the Government of the United States will reach. It is to be observed that the Government of Salvador is, as shown by Mr. Root and in accordance with all authorities on international law, the only competent judge to decide upon alleged danger which threatens the Salvadorean Government in consequence of the permanent occupation of the Gulf by the military forces which the United States would maintain within the naval base in question.

From this juridical solidarity the doctrines of the community of maritime rights of riparian states receives its greatest support and its complete political and juridical justification. In proof of this, neither the American Government has specifically denied the rights of Salvador within the juridical community of the Gulf, nor have its most noted statesmen failed to recognize those rights. Secretary Bryan proposed pecuniary compensations to the Salvadorean Minister at Washington, for such rights, a proposition which was flatly rejected by the Salvadorean Minister, not only because the Government of Salvador does not speculate in rights of national sovereignty, but because such a thing is prohibited by the political constitution of the Republic.

The eminent statesman, Mr. Root, in the letter published by the *Century*, expresses himself on this point as follows: ⁸

The proposed treaty is acceptable in substance, as it will benefit the country, but it should be negotiated with a new, freely elected government.

Moreover, Costa Rica must be first consulted, in so far as the granting by Nicaragua of the canal rights is concerned, in accordance with existing treaties and the Cleveland award. As to the naval base in the Gulf of Fonseca, a joint treaty, or simultaneous treaties, should be made with Honduras and Salvador.

³ The author has fallen into error in attributing this statement to Mr. Root. The language he quotes is that of Mr. Lincoln G. Valentine, the author of the article entitled "Meddling with our Neighbors," printed in the *Century*, ib., see p. 807.—ED.

The diplomatic task undertaken by Salvador to induce the Government of the United States to recognize its maritime community property rights with Honduras and Nicaragua within the Gulf is very meritorious; and this triumph of a weak country, while it suggests the great developments in this continent in the future, signally shows the high-minded spirit of equity and justice which animates the government and statesmen of the country of Washington and Jefferson.

In view of the foregoing considerations, there can be no doubt that the suit which must be undertaken against Nicaragua will have all of the characteristics of a legal dispute. It would besides have the exceeding novelty of being a process in which arbitration would solve a question of American international policy. In this way and through this channel it is firmly believed that the important question of the Gulf of Fonseca involving the neutrality of Honduras must be solved. Then the world would see that, not only disputes of a juridical nature, but even the most difficult and delicate controversies of policy and diplomacy, may find a peaceful and equitable solution in the arbitral award of an international court of justice. That, indeed, would undoubtedly be a great triumph of peace over war.⁴

SALVADOR RODRÍGUEZ GONZÁLEZ.

⁴ See the editorial comment on this question which appeared in this JOURNAL for April, 1916, p. 344, giving the status of the matter as it existed at that time. Ed.

NEUTRALITY AND THE SALE OF ARMS

The extent to which belligerents may interfere with the commerce of neutrals, on sea or land, has been in all wars a question of warm and continued dispute. A powerful belligerent is apt to proceed lawlessly, and a powerful neutral is apt to claim more rights than the authorities concede. It could not be expected that the present state of war, involving every first class Power in the world, except the United States, and many of the lesser states as well, would be free from such complications, and this expectation has certainly been realized.

It would be improvident to undertake the discussion of so broad a topic as the whole of this controversy. This writer has several times, before considerable assemblies and in various publications, ventured to express his opinion on one limited portion of this dispute, namely, as to the right of neutrals to export munitions of war to belligerents and the extent to which the other belligerents are entitled to complain of or interrupt such trade.

He presented them orally at Philadelphia before the American Academy of Political and Social Science, before the National Convention of the Navy League of the United States at Washington, April 1916, and more briefly before the Annual Meeting of the American Society of International Law for 1916. He has expressed them in the publications of the societies named above, and also in *The Outlook*, March 3, 1915, and in the New York *Herald*, May 6, 1915, and these expressions have been somewhat quoted and made the text of editorial remark. The writer has been asked to restate his facts and arguments for this Journal for convenience of access, and complies with the request.

The suggestion that such export is illegal, immoral and impolitic proceeds from many respectable sources and especially from those, including clergymen and women, who desire to promote peace and incautiously endorse any expedient claiming that result. Senator La

¹ See The Annals of the American Academy of Political and Social Science, Philadelphia, July, 1915, Publication No. 913.

Follette introduced a resolution asking for a congress of neutral nations to consider, with other matters, the prohibition of such exports. active and extended propaganda through the press and otherwise has been conducted to establish such prohibition, and petitions have been extensively circulated for signature demanding an embargo on arms. The writer respectfully submits, as to the rights of our citizens, as neutrals, to sell munitions of war to any belligerent Power (to quote his address before the American Academy of Political and Social Science):

- 1. That these rights are in no way denied by the rules of international law.
- 2. That these rights are not forbidden by any municipal statute or ordinance except as to vessels of war and, in certain limited cases, as to our neighboring American republics, when the latter are involved in civil strife.
- 3. That such rights have been constantly exercised in this country since the beginning of its history and in like manner have been habitually exercised by the manufacturers of the most enlightened commercial nations of the world, not only in remote times, but during all recent wars.
- 4. That such rights were fully recognized and reserved by the conventions of the Second Hague Conference in 1907.
- 5. That the maintenance of such rights is wise and necessary as their abolishment would force upon all nations a policy of the highest military and naval preparedness, which policy is one of vast economic loss and deeply hostile, instead of favorable, to peace.

6. That the fact that certain belligerents are prevented by the forces of the other from taking advantage of our markets does not make sales

to those who have such access a breach of neutrality.

7. That the powers which most severely attack this right have greatly profited by habitually exercising it in all recent wars and, under parallel circumstances, where the market was accessible to but one of the belligerents, have continued these sales to the other.

In support of propositions 1, 2 and 3, that such sales are not unlawful and have always been customary in this and all the leading countries of the world, he would call attention to the fact that Mr. Jefferson, when Secretary of State of the United States, wrote, very fittingly, to the British Minister as follows:

Our citizens have been always free to make, vend and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal disarrangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation, that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent Powers on their way to the ports of their enemies.²

In the same year Mr. Jefferson's great rival, Alexander Hamilton, in his Treasury circular of August 4, 1793, declares:

The purchasing within, and exporting from the United States, by way of merchandise, articles commonly called contraband, being generally warlike instruments and military stores, is free to all the parties at war, and is not to be interfered with.³

If either great party questions the soundness of our doctrine, we rest upon the authority of the founder of each.

Three years later, in 1796, Mr. Adet, then Minister of France, complained that contraband of war (to-wit horses) was exported to the enemies of France. Mr. Pickering, our able Secretary of State, fully maintained such right and practice, subject solely to the right of seizure in transit. He supports this view by judicial decisions, both Federal and State.⁴

In 1862 Mexico was engaged in a struggle with the Austrian Archduke Maximilian, supported by the military power of Napoleon III. She complained of the export from this country of military supplies on French account. William H. Seward, the great Secretary of State under Abraham Lincoln, replied.

If Mexico shall prescribe to us what merchandise we shall not sell to French subjects, because it may be employed in military operations against Mexico, France must equally be allowed to dictate to us what merchandise we shall allow to be shipped to Mexico, because it might be belligerently used against France. Every other nation which is at war would have a similar right, and every other commercial nation

- ² Mr. Jefferson, Secretary of State, to British Minister, May 15, 1793, 5 MS. Dom. Let. 105; 1 American State Papers, 69, 147; 3 Jefferson's Works, pp. 558, 560; quoted 7 Moore's Digest, p. 955.
- American State Papers, Foreign Relations, p. 140; quoted Moore's Digest, p. 955.
 Mr. Pickering, Secretary of State, to Mr. Adet, Jan. 20, and May 25, 1796,
- 1 American State Papers, For. Rel. 645-649; 7 Moore's Digest, 956.

would be bound to respect it as much as the United States. Commerce, in that case, instead of being free and independent, would exist only at the caprice of war.⁵

Mr. Seward and our whole people were most hostile to the French occupation, and ultimately compelled its abandonment, but the rule as to our right of export was too clear to dispute and too important to in any way abate.

Honorable John Bassett Moore, our ripest and most comprehensive publicist, prints eighteen pages of extracts to like effect from Presidents, Secretaries of State and Attorneys General, from Henry Clay, General Grant, Marcy, Fish, Evarts, Bayard, Frelinghuysen, Blaine, Foster, Olney and John Hay, and also a clear and strong opinion by Mr. Elihu Root, then serving as United States District Attorney at New York.⁶

The courts of England and America fully uphold these doctrines as formulated by our statesmen and officials, holding consistently that contracts for the export of contraband by neutral citizens to belligerents are neither unlawful nor immoral; that they are merely subject to frustration by the other belligerent by seizure of the goods consigned on the high seas or in belligerent territory; that courts of justice will therefore fully recognize such contracts and afford remedies for their breach. although no such aid is given by them to contracts illegal, immoral or contrary to public policy. In a celebrated case Lord Chancellor Westbury quoted the opinion of the Supreme Court of the United States written by Mr. Justice Story (probably our greatest judicial scholar in international law) in the Santissima Trinidad 8 that "there is nothing in our laws, or in the law of nations, that forbids our citizens from sendmunitions of war to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."

In 1901 the United States Circuit Court for the Eastern District of Louisiana was asked to restrain the export of horses and mules (contra-

⁶ Mr. Seward, Secretary of State, to Mr. Romero, Mexican Minister, December 15, 1862, MS. Notes to Mexico, VII, 215; 7 Moore's Digest, p. 958.

⁶ See 7 Moore's Digest, pp. 955-973.

⁷ See Ex parte Chavasse, in Re Grazebrook, 34 L. J., n. s., Bankruptcy, 17 (Scott's cases International Law, p. 779).

⁸ 7 Wheaton, 340.

band) from the United States by Great Britain for use in the Boer War; but all such relief was denied and traffic by neutrals in contraband of war was held entirely lawful and unchanged by the treaty relating to the Alabama claims. It may be mentioned that the same person who brought the proceedings just mentioned sought to hinder the export of contraband in the present war but was denied all relief by the courts.

In 1905 the English courts declared the same doctrine as to the shipment of contraband by neutrals during the Russo-Japanese War. 10

The Hague Conference of 1907 adopted substantially identical conventions as to neutral duties in land war and in maritime war as follows:

A neutral Power is not bound to prevent the export or transit on behalf of one or the other of the belligerents of arms, munitions of war, or, generally, of anything which can be of use to an army or fleet.¹¹

The note in Hershey's Essentials of International Public Law, page 459, to the above, shows that official protests by belligerent governments against this right are heard in nearly every war; that the view represented by these protests is championed by a small band of publicists, notably Hautefeuille, Phillimore and Kleen, which, Professor Hershey, who, by the way, holds a doctorate from Heidelberg University, adds very justly, "is without sanction, either in theory or practice."

One of the expert delegates of the United States at The Hague told this writer that he remarked at The Hague that apparently the main object of the Conference was to prevent any interference with the export of arms by the Krupps at Essen.¹²

The conventions mentioned above were generally ratified, Austria-Hungary and Germany both ratifying them on November 27, 1909. I do not refer to these conventions as establishing any new rule, but as stating clearly and agreeing explicitly to the existing rule.

A letter from Mr. Bryan, then Secretary of State, understood to have

⁹ See Pearson v. Parsons, 108 Fed. R. 461. Many more judicial decisions might be cited if deemed necessary.

¹⁰ See Law Guarantee and Trust Soc. v. Russian Banks, K. B. Div. H., Ct. Law Times, Vol. XVIII, p. 503. See also, 2 Oppenheim, International Law, p. 431; Taylor, International Law, p. 741.

¹¹ See Hershey's Essentials of International Law, pp. 459 and 467.

¹² Mr. Roosevelt quotes this statement by this writer and commends the article, in his late book Fear God and Take Your Own Part, pp. 156, 158, 160.

been drafted by Mr. Robert Lansing, dated January 20, 1915, addressed to Senator Stone, ably reviewed the authorities and fully supported the right of our citizens to export munitions of war in general, to belligerents not at war with this country.¹³

Count von Bernstorff, the German Ambassador, on April 4, 1915, delivered to Secretary of State Bryan, a memorandum suggesting among other things the following: That "the United States is * * * the only neutral country in a position to furnish war materials." That her "existing plants" for the manufacture of the same were "not only being worked but enlarged by all available means, and new ones built." That

it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state such as is the development of the arms industry in the United States. * * * This industry is actually delivering goods only to the enemies of Germany. The theoretical willingness to supply Germany also, if shipments thither were possible, does not alter the case. If it is the will of the American people that there shall be a true neutrality, the United States will find means of preventing this one-sided supply of arms. ¹⁴

On April 21, Mr. Bryan replied, intimating that it was not within the choice of the United States Government to inhibit such trade by any change of its law of neutrality, during the progress of a war, which would affect unequally the relations of the United States with the nations at war; that the present indisputable doctrines of accepted international law would make such change an unjustifiable departure from the principles of strict neutrality.¹⁵

This writer, at the session of the American Academy of Political and Social Science at Philadelphia, held April 30 and May 1, 1915, discussing this topic and having regard to this correspondence, referred to Germany as having protested against the export of munitions from this country to the Allies. This, as he understood, was the interpretation of our Department of State. Dr. Bernard Dernberg, the representative of Germany, speaking in reply said, "I want to state here most emphatic-

¹³ Special Supplement to this Journal for July, 1915, p. 255.

¹⁴ Ibid., p. 125.

¹⁵ Ibid., p. 127.

ally that Germany at no time has disputed the right to ship or to sell arms. This statement that she has is absolutely false." ¹⁶ The admission of Dr. Dernberg must be received as an important modification of the interpretation which the memorandum of the Ambassador had given rise to.

The writer submitted to the Academy, on the above occasion, the following statement as to the practices of Germany:

German citizens have habitually sold vast quantities of military supplies to belligerents. Essen is perhaps the very center of military supplies and has exported on an enormous scale to belligerents in all modern wars, making, it is understood, vast profits from this traffic in the late Balkan wars. It will be interesting to know what has been Germany's practice when one of the belligerents had access to her markets and the other had not. Has the rule been observed, which she now presses upon us? Has she recognized this situation as compelling her to deny to the Power having access, the right to buy, on the ground that real neutrality so required?

The war between the South African Republic and Great Britain began in October 1899, and was closed by the Treaty of Pretoria at the end of May, 1902. During the earlier portion of the war, supplies were received by the Boers through Lorenzo Marques, a neighboring Portuguese port, with some freedom, but in August, 1900, all the customs officials at Lorenzo Marques were dismissed and their places filled by military officers and a force of 1,200 men was sent out from Lisbon. The frontier was guarded and the trade stopped.¹⁷

The strictness of the Portuguese authorities increased with the decline of the fortunes of the Boers.

England had seized and searched a number of neutral vessels—including three German steamers—and positively claimed the right to seize contraband bound to the Boers though through a neutral port. She relied for this largely on the precedents of our Civil War, and it would appear that the access of the Boer force to German markets was substantially destroyed. The question occurred to the writer, would it be found that during the later years there were imported from Germany into England large quantities of arms and military supplies, notwithstanding this situation? He therefore took the liberty to apply to the British Embassy at Washington, which very obligingly cabled to London for information. April 27, a letter from the Embassy advised that "when the Boers were shut off from supplies by sea, Great Britain got from Germany 108 fifteen-pounder quick-firing guns and 500 rounds per gun. They were purchased from Ehrhardt by private negotiation." It is

¹⁶ Annals of American Acad. Political and Social Science, July, 1915, p. 195.

¹⁷ See Campbell's Neutral Rights in Anglo-Boer War, p. 60.

respectfully submitted that this is sufficient to support the practice of our government. But this writer had made other investigations which showed vastly larger military supplies passing from Germany to Great Britain at this time. This appears from the statistics as to the foreign trade of the United Kingdom compiled at the custom house, and presented to both Houses of Parliament by command of His Majesty and printed by His Majesty's stationery office. These published records, long anterior to the present unhappy controversy, preserved in the library of the Department of Commerce of the United States, show that there were imported from Germany into Great Britain.

In 1899. Swords, cutlasses, machets, and bayonets, cwts. 782.

1900. Swords, cutlasses, machets and bayonets, cwts. 1,664.

1901. Swords, cutlasses, and arms of other sorts not firearms, cwts. 12,560.

1902. Swords, cutlasses, and arms of other sorts not firearms, cwts. 50,734.

Many more than from any other source.

Rifles, carbines, fowling pieces, muskets, pistols, or guns of any sort.

1899. Value £655; in 1900. £428.

In 1901. Metal cartridge cases, other than small arms ammunition (more than six times as many as from any other source), 1,378,600.

1901. Cordite and other smokeless propellants, 231 cwts.

1901. Gunpowder, 318 cwts. 1902. 253 cwts.

Dynamite and other high explosives.

1901. 11,029 cwts. 1902. 14,771 cwts. and in latter year these explosives were worth £84,894.

Rockets and other combustibles for warlike purposes. Explosives and ammunition unenumerated.

1901. Of the value of £29,546. 1902. Of £26,171.

Small arm ammunition

1901. Numbers 3,350,040. 1902. Numbers 4,732,500.

Fuses, Tubes and Primers

1901. Numbers 892,007. 1902. Numbers 2,033,116.

The consumption of ammunition in the present war is on so vast a scale that the above figures may seem trivial, but we must remember that Mr. Lloyd George has recently said that in a single battle in the present war more ammunition was consumed than during the entire Boer War.

It is submitted that the above trade figures between Germany and Great Britain embalm a principle and afford a German precedent in entire accord with the law and practice announced by our own government. They are the more convincing because Germany's sympathy was strongly with the South African republic and strongly against England.¹⁸

¹⁸ Annals American Academy of Political and Social Science, July, 1915, p. 189.

On June 29, 1915, the Austro-Hungarian Government in turn addressed a communication to our Ambassador at Vienna calling attention to the great traffic in munitions of war between the United States and the Allied Powers while "Austria-Hungary as well as Germany have been absolutely excluded from the American market," intimating that it seemed imperative "that appropriate measures be adopted toward bringing into full effect the desire of the Federal Government to maintain an attitude of strict parity with respect to both belligerent parties." It further said that, tried by the criterion laid down in sciences, "the exportation of war requisites from the United States as it is being carried on in the present war is not to be brought into accord with the demands of neutrality." ¹⁹

Mr. Lansing, Secretary of State of the United States, replied August 12, 1915: 20

To this assertion of an obligation to change or modify the rules of international usage on account of special conditions, the Government of the United States can not accede. The recognition of an obligation of this sort, unknown to the international practice of the past, would impose upon every neutral nation a duty to sit in judgment on the progress of a war and to restrict its commercial intercourse with a belligerent whose naval successes prevented the neutral from trade with the enemy.

Further that the ideas advanced * * *

would involve a neutral nation in a mass of perplexities which would obscure the whole field of national obligation, produce economic confusion, and deprive all commerce and industry of legitimate fields of enterprise, already heavily burdened by the unavoidable restrictions of the war.

The attention of the Austro-Hungarian Government was directed to the facts as to the sale of munitions by Germany and Austria-Hungary to England during the Boer War when the South African Republics were cut off from all access to European markets, and it was pointed out that "the allied republics were in a situation almost identical in that respect with that in which Austria-Hungary and Germany find themselves at the present time."

¹⁹ See Spl. Sup. this JOURNAL, July, 1915, p. 146.

²⁰ Ibid., p. 166.

The Secretary of State, Mr. Lansing, had advised this writer by letter of June 7, 1915, that he had "read carefully" his paper on this subject presented to the American Academy of Political and Social Science. The Department of State retabulated the figures as to German and Austro-Hungarian sales of munitions to England during the Boer War, during much of which the African Republics were so isolated. The figures given by it are as follows:

GERMAN EXPORTS OF ARMS AND AMMUNITION TO GREAT BRITAIN

	Quantity 100 Kilos			
Articles	1899	1900	1901	1902
Explosives	4,342	6,014	5,147	3,645
Gunpowder	28	658	243	69
Gun barrels	12	366	21	133
Shot, of malleable iron not polished, etc.	30	43	38	
Shot (further manufactured) polished, etc., no	$^{ m t}$			
lead coated		4		
Shot, nickled or lead coated with copper ring	в,			
etc.		3,018	176	
Weapons for war purposes			18	2
Cartridges with copper shells and percussio	n			
caps	904	1,595	866	982

AUSTRO-HUNGARIAN EXPORTS OF ARMS AND AMMUNITION TO GREAT BRITAIN

Articles	Quantity 100 Kilos			
	1899	1900	1901	1908
Arms, exclusive of small arms.	190	374	12	
Separate parts of guns	1	1		
Small arms	2	3	80	5
Ammunition and explosives under tariff No.				
346	1	7	16	51
Other ammunition and explosives			4	

The attempt has been so far to show the validity and customary character of such neutral trade in munitions, and that it is unaffected by the varying conditions of the war. It remains to consider the most important aspect of all, namely, the effect of such traffic upon the welfare of mankind in general, and hence its morality.

Upon that subject this writer again ventures to quote his remarks

to the American Academy of Political and Social Science before alluded to.²¹ He there said:

A system under which a peaceful commercial state may not, when attacked, use her cash and her credit in the international markets to equip herself for defense, is intolerable and in every way pernicious.²²

The warlike and aggressive nation chooses the moment of attack and is naturally fully equipped. If the nation assailed cannot replenish her supplies from outside she must always maintain them at the top notch

of efficiency or she exposes herself to ruin.

If a nation, the moment she becomes, willingly or unwillingly, a belligerent, is helpless to augment her defensive equipment from outside; if she cannot, as this writer, if he may be allowed to quote himself, said recently in the *Outlook*, "import a pound of powder, a gallon of petrol, an ounce of copper, a gun, a sabre, a harness or a horse," then a wasteful system is forced on all nations under which they must always, without intermission or relaxation, maintain their defenses and warlike supplies on a war footing of the highest efficiency and amplitude.

One of the ripest scholars in international law was the late Professor Westlake, one of the founders and president of the Institute of International Law. Moreover, his was one of the clearest, strongest and fairest minds addressed to international questions. In 1870, when a former Count von Bernstorff, then German Ambassador at London, protested against the export of military supplies from England to France during the Franco-German War, Professor Westlake discussing the effect of forbidding such export, wrote:

One disadvantage of no ordinary magnitude I can plainly see. The manifest tendency of all rules, which interfere with a belligerent's power to recruit his resources in the markets of the world, is to give the victory in war to the belligerent who is best prepared at the outset; therefore, to make it necessary for states to be in a constant condition of preparedness for war; therefore, to make war more probable.¹²

In other words, as Professor Westlake has pointed out, it would tend strongly to force all nations to the extreme of militarism, a policy economically impoverishing and also most perilous to peace. The policy of open neutral markets for war supplies enables peaceful wealth to be transmuted and defense to be rapidly provided. Neutral markets would not be denied the aggressor by the restriction since he, knowing his plans, could largely provide for them before belligerency. As this writer lately observed:

²² Collated Papers, Westlake on Public International Law, p. 391.

²¹ Annals American Academy Political and Social Science, July, 1915. Publication No. 913; New York Herald, May 16, 1915.

²² Mr. Roosevelt in his Fear God and Take Your Own Part, p. 162, quotes this passage too kindly, attributing it to "a great expert on international law."

Wars now are as sudden as conflagrations in their origin and the advantages of preparation and initiative are immense. Why make them vastly greater? Why tempt to secret preparation and sudden aggression by greatly reducing the resources and avails of the defending Power? Why aid the wolf and hamstring the lamb? Why by a change of law and policy aid and encourage the predatory policy and debilitate defence? Such change must stimulate war and discourage peace.

It is therefore opposed to the general interest of mankind, and the present rule is wiser and more pacific, tending to maintain the safety and stability of the nations whose main employments are in the peaceful arts.

One of the most serious lessons of the present great European War is that all the successes and failures of modern war depend on "mechanical preponderance." Supplies of munitions have become even more important than levies of men. A few men with munitions can overcome far greater numbers animated by the greatest courage and the most patriotic devotion, but without military supplies.

Any rule which prevents a powerful and wealthy nation, when attacked, from buying where she will such munitions, is hostile to the interest and the existence of such peaceful states, and so to the general interest of mankind. As this writer has said:

Such a change of law and practice, * * magnifies the power of the prepared and predatory states, and it hinders and prevents the defense of the pacific states. It helps the carnivorous states, and it hurts the herbivorous states, as it were. It sharpens the fangs of the wolf, constantly used in attack, and it takes away the antlers of the stag, as constantly used for defense alone. It tends to embroil the nations and to destroy their balance and repose. It is a pernicious, unwise, and immoral restraint, an injurious change in a just rule.²⁴

It is submitted that our people have a right by all laws, international and municipal, to manufacture and freely sell to all comers munitions of war (except when restrained for special circumstances by special laws, as along our Southern border); that this right is founded not merely on the long-established customs of all nations, including our own, on the opinions of statesmen, judges and scholars and on the express agreement of the nations at the last Hague Conference, but it rests upon considerations of wise and necessary policy, salutary for all peaceful nations and

²⁴ Navy League of the United States, Pamphlet 16.

hostile to predatory nations; that it ought therefore to be fully preserved and fully exercised for the welfare and safety of all nations seeking to avoid the extremes of militarism, and to devote themselves, without sacrifice of security, to pursuits of peace; that in adhering to, maintaining, and exercising such a right we pursue a policy hostile to no nation and vital to the safety of our own.

CHARLES NOBLE GREGORY.

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EDITORIAL COMMENT

THE CORRESPONDENCE REGARDING THE S. S. SUSSEX

The negotiations between the Governments of the United States and Germany regarding the *Lusitania* were believed to be approaching a conclusion when, on March 24, 1916, the unarmed French steamship *Sussex*, while crossing from Folkestone to Dieppe with 325 or more passengers, among them a number of American citizens, was torpedoed and sunk in the Channel.

On March 27th inquiry was made by the Secretary of State of the United States through the American Ambassador at Berlin if the Sussex was sunk by a submarine belonging to Germany or her allies, and in the next few days similar inquiries were made regarding four other vessels reported to have been sunk with American citizens on board, thus re-

newing the whole question of the methods employed by Germany in submarine warfare.

The circumstances of this renewal of the submarine policy of Germany, after the tardy endeavor to reach an understanding with the United States regarding the *Lusitania*, were of a nature to aggravate the new offense. The evasive character of Germany's reply to the notes of inquiry in the face of the evident facts, was tempered in only a slight degree by a request for such evidence regarding the sinking of the Sussex as the United States might be able to furnish. This, happily, was abundant, precise, and overwhelming; and the German Government was unable to escape the conclusions that the Sussex had never been armed. that the vessel had been habitually used for the conveyance of passengers across the Channel, that the route followed was not the one taken by troop ships or supply ships, that about 80 of her passengers,—noncombatants of all ages and both sexes, including citizens of the United States,—were killed or injured, and that the cause of the sinking was a torpedo of German manufacture sent without warning from a submarine.

In the note of April 18th, in which the evidence supporting these conclusions was furnished, the Secretary of State said:

If it is still the purpose of the Imperial Government to prosecute relentless and indiscriminate warfare against vessels of commerce by the use of submarines without regard to what the Government of the United States must consider the sacred and indisputable rules of international law and the universally recognized dictates of humanity, the Government of the United States is at last forced to the conclusion that there is but one course it can pursue. Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether.

Such an attitude was not only justified by every consideration of international law and national duty, but was absolutely necessary to support any pretense that the rights of American citizens on the sea would henceforth be protected. The limit had been reached beyond which long-suffering could not go. In making this decision, therefore, there was no room for doubt or debate. Not to have made it would have been to abdicate the place of the United States among civilized nations.

This is not an occasion for a general review of the diplomacy of the United States regarding the submarine policy of Germany, but it is

proper to say that the juncture reached in the case of the Sussex was an inevitable consequence of the ground taken by the Imperial German Government, and was as certain at the beginning of its practice as it became in the end. The only fundamental question throughout the entire prolonged negotiations on that subject was just when the ultimatum would have to be delivered. From the first it was evident either that the German policy must give way or that international law would continue to be disregarded and American lives imperilled.

The attitude taken in reply to the American demands completely establishes this assertion. While unwilling to admit in explicit terms that the sinking of noncombatant ships without warning and without making provision for the safety of noncombatants on such ships is illegal, the Imperial German Government practically admits that it is so. The practice is defended in the note of May 4th, in reply to the American note of April 18th, not as a legal form of warfare but as a form of reprisal. The German Government has never asserted its legal right to destroy the lives of noncombatants at sea. It knows that it has no such right. In the note just referred to it is stated: "The German submarine forces have had, in fact, orders to conduct submarine warfare in accord with the general principles of visit and search and destruction of merchant vessels as recognized by international law." But this, it is explained, was never promised and never intended to apply, except outside "the war zone surrounding Great Britain." Within that zone, it is contended, "in self-defence against the illegal conduct of British warfare, while fighting a bitter struggle for her national existence, Germany had to resort to the hard but effective weapon of submarine warfare." It is necessity, not law, it is alleged, that has inspired her conduct. "As the German Government has repeatedly declared," says the note of May 4th, "it cannot dispense with the use of the submarine weapon in the conduct of warfare against enemy trade." The situation thus created was, in effect, the complete abolition of international law in an important area of travel and commerce as far as the rights of noncombatants, including neutrals, were concerned. For them it ceased to afford the slightest means of protection against sudden death.

It is hardly within the scope of these comments to express opinions regarding the question of reprisals, either as to who was the belligerent responsible for resorting to them or the degree of equity with which they have been carried out. But one thing is clear. Whatever the merits of this question may be, there is no just ground for the position

taken by the Imperial German Government, that it may resort to reprisals without regard to their effect upon the lives of the citizens of neutral Powers with which it desires to be at peace. There are other necessities besides those of a single Power, even though fighting for its existence; and not to respect them is not only an illegal, it is an unfriendly act.

The Imperial German Government fully comprehends this, and declares its willingness to make a "further concession;" that is, a nearer approach to the recognized requirements of international law. "In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law," runs this new concession, "such vessels, both within and without the area declared as a naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance."

It is somewhat surprising, after the faith imposed in the formal pledge previously given, that "liners will not be sunk by our submarines without warning and without safety of the lives of noncombatants, provided that the liners do not try to escape or offer resistance," to find the new formula described as a "further concession." In the words last quoted no exception is made of a "war zone." This pledge is as absolute and as unrestricted as to locality as the later one. In truth, the new assurance is less satisfactory than the old one, for it not only justifies Germany's course by a complaint that the Government of the United States has not used its power to restrain the conduct of Great Britain, that it has not shown sympathy with Germany's extremity, and that it has even supplied her enemies with all kinds of war material; but reserves "complete liberty of decision," in case steps proposed to be taken by the Government of the United States should not attain the result of removing the occasion for Germany's reprisals. In brief, "It will be understood," runs the note, "that the appeal made by the Government of the United States to the sentiments of humanity and to the principles of international law can not, under the circumstances, meet with the same hearty response from the German people which such an appeal is otherwise always certain to find here."

How far the controversy regarding the *Lusitania* and the *Sussex* really is from a definitive settlement is evident from the reply to the last German note on this subject by the American Secretary of State. "The Government of the United States," he says, "notifies the Imperial

Government that it can not for a moment entertain, much less discuss, a suggestion that respect by German naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made contingent upon the conduct of any other Government affecting the rights of neutrals and noncombatants. Responsibility in such matters is single, not joint; absolute, not relative."

So far, therefore, as the correspondence is concerned, the attitude of both Governments remains essentially unchanged, and none of the questions involved has received a final solution.

DAVID JAYNE HILL.

BRITISH ORDERS IN COUNCIL AND INTERNATIONAL LAW

From time to time the press informs the public that on such and such a date a British Order in Council has been issued affecting the rights of neutrals, and the question is debated whether or not the Order in Council, contrary to international law, is binding upon neutrals and whether, indeed, the Order contrary to international law is binding upon prize courts in which the question of capture of neutral property is to be contested. It is therefore of interest to consider the nature of an Order in Council, its relation to an act of Parliament, its effect upon the rights of neutrals, and its authority in British prize courts.

Sir William Anson says, in *The Law and Custom of the Constitution*, that "an Order in Council is practically a resolution passed by the King in Council, communicated by publication or otherwise to those whom it may concern." After this brief definition, the learned author gives the following as an example of the wording of such an order:

At the Court at . , the 1st day of June, 1907.

Present,—

The King's most excellent Majesty in Council.

His Majesty, by and with the advice of his Privy Council, doth order and it is hereby ordered. * * * 1

After contrasting the Cabinet and Privy Council, of which latter body the Cabinet are members, the same learned author says:

The Cabinet considers and determines how the King's Government may best be carried on in all its important departments; the Privy Council meets to carry into

Anson's Law and Custom of the Constitution, Vol. II, 3d ed., Part 1, p. 50.

effect advice given to the King by the Cabinet or by a Minister, or to discharge duties cast upon it by custom or statute.

He concludes this part of the subject with the statement that "the Privy Council is essentially an executive, the Cabinet a deliberative body. The policy settled in the Cabinet is carried out by Orders in Council, or by action taken in the various departments of government."

If, as Sir William Anson says, the Privy Council is essentially an executive body, it follows that the King in Council issues orders of an executive nature. He may do so in each of two cases, the first of which is in accordance with custom and to give effect to the prerogatives of the Crown; the second is in pursuance of an act of Parliament, vesting the King in Council with authority to do a specific act. In the first case the jurisdiction of the King in Council is limited, as it could not be successfully claimed to-day that the King in Council, even though the members of the Cabinet be present and should so advise, could legislate, as Parliament is the legislative body of Great Britain. In the second case, the King in Council acts pursuant to parliamentary and statutory authority, and to the extent of the statutory authority the Orders have the force of law.

They are, however, only in form Orders in Council; in fact they are acts of Parliament, as they are authorized by Parliament and therefore, if within the statute, are equivalent to a statute. Mr. Jenks, in his Short History of English Law, thus states the reason and the effect of the Order in Council made in pursuance of an act of Parliament:

Owing partly to the necessity for leaving the application of discretionary legislation to the Executive, but still more to the impossibility of discussing details in an overworked Parliament, it has become increasingly common for Parliament to delegate, either to the Crown (i. e., the Executive as a whole) or even to the Minister at the head of the department charged with carrying out the Act, the power of making Rules or Orders under it. These Rules and Orders are, in effect, so long as they keep within the authority prescribed by their respective Acts, themselves Parliamentary statutes, and are enforced by the Courts as such. It is, of course, in theory, possible to raise against any of them the plea of ultra vires; but they are usually drawn with sufficient skill to render such an attack hopeless. * * The difference between Orders made by the Crown in Council and those made by a single Minister, is more apparent than real. For, in the former case, as in the latter, the form and

² Anson's Law and Custom of the Constitution, Vol. II, Part 1, p. 98.

contents are virtually settled by the departments concerned; the approval by the Privy Council is a pure formality.

But whether the Order in Council be in virtue of a custom or of the King's prerogative—which cannot, however, be contrary to a statute of Parliament—or whether it be in pursuance of parliamentary authority and is thus to be considered as an act of Parliament, it would seem to be too clear for argument that an Order in Council, if it be considered a statute, is municipal; that if it be legislative it is domestic legislation, and while it may affect persons within British jurisdiction it cannot properly be extended, any more than a statute can properly be extended, beyond the jurisdiction of Great Britain so as to affect the rights of foreign countries, their subjects or citizens.

For this statement, it does not seem necessary to cite authority, and yet, in view of the fact that Orders in Council have been issued during the wars of the French Revolution and the Empire which seriously affected the rights of neutrals beyond British jurisdiction, and in view of the further fact that some of the Orders in Council issued since the outbreak of the great war affect neutral rights, it seems advisable to quote an authority distinctly negativing the claim of any country to legislate for other than its own subjects or citizens, which claim, if allowed, would violate the perfect equality of states upon which the society of nations is predicated and without which it could not exist. In the case of *The Antelope* (10 Wheaton 66, 122), decided in 1825, Chief Justice Marshall, speaking for the Supreme Court of the United States, said:

No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone.

A few years before, Sir William Scott so held in the case of *The Louis* (2 Dodson, pp. 210, 243-44), which it is important to quote in this connection in order that it may appear clear, beyond the possibility of misconception, that the courts of Great Britain as well as the courts of the United States recognize the equality and independence of states and the right of states as such freely to navigate the ocean without let or hindrance by legal statute, whether that statute be termed an Order

Jenks, A Short History of English Law, 1912, p. 188.

in Council or an act of Parliament. In the case of *The Louis*, decided in 1817, that great and learned judge said:

Two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all states meet upon a footing of entire equality and independence, no one state, or any of its subjects, has a right to assume or exercise authority over the subjects of another.

It would seem to follow from these decisions that an act of Congress or a British statute inconsistent with international law is null and void in so far as foreign nations are concerned and in so far as their citizens and subjects not within the jurisdiction of the United States or of Great Britain are concerned, although it may well be, and is in fact the case, that an act of Congress or an act of Parliament contrary to international law binds the authorities of the United States and American citizens, on the one hand, and British authorities and British subjects, on the other.

Finally, the question arises as to the effect of an Order in Council upon British prize courts, a question to be determined exclusively by Great Britain, which can by statute prescribe the law to be administered in British prize courts. To the foreigner it is immaterial whether the law is prescribed by an act of Parliament or by an Order in Council, as the question is not what particular municipal organ may prescribe the law but whether the law has been prescribed in such a way as to force the prize court to apply a rule contrary to international law in the decision of cases involving neutral rights. Whether this be done by act of Parliament or by Order in Council is a matter of indifference to the foreign nation, whose desire is that it be done neither by one nor the other, nor both working in common. It is, of course, a matter of considerable importance to British authorities in the performance of their duties whether they are or are not bound by an Order in Council, but this is a question of constitutional, and therefore domestic, not of international, law.

The nature of an Order in Council and its effect upon a British prize court was recently considered in the case of the Zamora, and the holding of the Judicial Committee of the Privy Council on appeal has been a source of much favorable comment on the part of American publicists. It is believed, however, that, carefully considered, the decision, while worthy of the greatest respect, is not to be taken as laying down the broad principle that a British prize court cannot decide a case involving neutrals against international law; but that the statute creating the prize court and prescribing that its decisions be in accordance with the law of nations cannot be varied by an order of the King in Council, although it may be varied by an act of Parliament.

Briefly stated, the facts in the case were that the Zamora, a Swedish (therefore a neutral) ship, bound from New York to Stockholm (therefore on a voyage between two neutral points), was seized off the coast of Scotland, between the Faroe and Shetland Islands, on April 8, 1915, by a British cruiser, and sent into the Orkney Islands as prize. The vessel carried copper and, during proceedings instituted in the prize court for the condemnation of the ship and cargo because of the contraband character of the latter, "the Crown applied to the prize court for an interlocutory order that about 400 tons of copper, which formed part of the cargo, should be released and delivered up to the Crown under Order XXIX of the Prize Court Rules, upon an undertaking of the Crown to pay into court the appraised value of the copper in accordance with Rule 5 of the Order." This request was based upon the Prize Court Rules issued by the King in Council, allowing cargo to be requisitioned by the Crown pending the decision of the court upon the validity of the capture. The application was resisted on behalf of the Swedish firm which claimed to own the cargo on the ground "that the provisions of the Order referred to violated the law of nations and were not binding upon the court."

Sir Samuel Evans, President of the Prize Court, decided that the Order in Council was imperative in nature, that is, that it commanded him to grant the application of the Crown made in pursuance of the Order, and decreed as requested.

Upon appeal to the Judicial Committee of the Privy Council, that Printed in this Journal for April, 1916, p. 422.

learned body reversed the decision of the prize court, not because the Crown did not possess the right to requisition the copper, but because, in the opinion of their lordships, no sufficient evidence had been adduced by the Crown for the necessity of such requisition. In the course of its decision the Privy Council stated that the Order in Council invoked in the case was not imperative, as Sir Samuel Evans had supposed, and that even if it were imperative it would not be binding upon the court if inconsistent with the law of nations, because by statute the British prize court is required and authorized, as their lordships said, "to proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships or goods that are or shall be taken, and to hear and determine according to the course of admiralty and the law of nations." Their lordships stated, in clear and unmistakable terms, per Lord Parker, who delivered their judgment, that an Order of the King in Council contrary to international law did not bind the prize court, for the very simple reason that the prize court was constituted "to hear and determine according to * * * the law of nations" and that an Order in Council could not modify the law of nations.

The court, however, did not say that Parliament could not prescribe a rule of decision contrary to the law of nations. Indeed, the judgment expressly declared that Parliament possessed this power and that a British prize court was bound to obey and give effect to an act of Parliament, even although such act should be contrary to the law of nations. The King in Council could prescribe procedure to be observed in the prize court not inconsistent with the law of nations. Parliament could not merely prescribe procedure at variance with the law of nations but could pass a statute in the teeth of international law.

It should further be said that their lordships did not deny the right under international law to requisition vessels or goods before their condemnation, but expressly affirmed this right and reversed the judgment of the prize court, because in the exercise of this right the judge, Sir Samuel Evans, had not had evidence before him which would justify the requisition. It is perhaps well to quote this portion of the judgment before proceeding to that portion dealing with the Order in Council.

On the whole question their lordships have come to the following conclusion: A belligerent Power has by international law the right to requisition vessels or goods in the custody of its prize court pending a decision of the question whether they should be condemned or released, but such right is subject to certain limitations. First, the vessel or goods in question must be urgently required for use in connection with the defence of the realm, the prosecution of the war, or other matters involving national security. Secondly, there must be a real question to be tried, so that it would be improper to order an immediate release. And, thirdly, the right must be enforced by application to the prize court, which must determine judicially whether, under the particular circumstances of the case, the right is exercisable.

In speaking of the effect of the Order in Council in a court of prize and of the nature of the prize court itself, Lord Parker said, speaking for the court:

In the first place, all those matters on which the court was authorized to proceed were, or arose out of, acts done by the sovereign power in right of war. It followed that the King must, directly or indirectly, be a party to all proceedings in a court of prize. In such a court his position was in fact the same as in the ordinary courts of the realm on a petition of right which had been duly fiated. Rights based on sovereignty were waived and the Crown accepted for most purposes the position of an ordinary litigant. A prize court must, of course, deal judicially with all questions which came before it for determination, and it would be impossible for it to act judicially if it were bound to take its orders from one of the parties to the proceedings.

In the second place, the law which the prize court was to administer was not the national, or, as it was sometimes called, the municipal law, but the law of nations—in other words, international law. It was worth while dwelling for a moment on that distinction. Of course, the prize court was a municipal court and its decrees and orders owed their validity to municipal law. The law which it enforced might, therefore, in one sense, be considered a branch of municipal law. Nevertheless, the distinction between municipal and international law was well defined. A court which administered municipal law was bound by and gave effect to the law as laid down by the sovereign state which called it into being. It need inquire only what that law was, but a court which administered international law must ascertain and give effect to a law which was not laid down by any particular state, but originated in the practice and usage long observed by civilized nations in their relations with each other or in express international agreement.

It was obvious that, if and so far as a court of prize in this country was bound by and gave effect to orders of the King in Council purporting to prescribe or alter the international law, it was administering not international but municipal law; for an exercise of the prerogative could not impose legal obligation on anyone outside the King's dominions who was not the King's subject. If an Order in Council were binding on the prize court such court might be compelled to act contrary to the express terms of the commission from which it derived its jurisdiction.

There was yet another consideration which pointed to the same conclusion. The acts of a belligerent Power in right of war were not justiciable in its own courts unless such Power, as a matter of grace, submitted to their jurisdiction. Still less were such acts justiciable in the courts of any other Power. As was said by Mr. Justice

Story in the case of The Invincible (2 Gall., 43), "acts done under the authority of one sovereign can never be subject to the revision of the tribunals of another sovereign, and the parties to such acts are not responsible therefor in their individual capacity." It followed that, but for the existence of courts of prize, no one aggrieved by the acts of a belligerent Power in times of war could obtain redress otherwise than through diplomatic channels and at the risk of disturbing international amity. An appropriate remedy was, however, provided by the fact that, according to international law, every belligerent Power must appoint and submit to the jurisdiction of a prize court, to which any person aggrieved had access, and which administered international as opposed to municipal law-a law which was theoretically the same, whether the court which administered it was constituted under the municipal law of the belligerent Power or of the sovereign of the person aggrieved, and was equally binding on both parties to the litigation. It had long been well settled by diplomatic usage that in view of the remedy thus afforded, a neutral aggrieved by any act of a belligerent Power cognizable in a court of prize ought, before resorting to diplomatic intervention, to exhaust his remedies in the prize courts of the belligerent Power.

A case for such intervention arose only if the decisions of those courts were such as to amount to a gross miscarriage of justice. It was obvious, however, that the reason for that rule of diplomacy would entirely vanish if a court of prize, while nominally administering a law of international obligation, were in reality acting under the direction of the Executive of the belligerent Power.

His lordship, however, made it perfectly clear that the power resided in Parliament to pass an act contrary to international law and that in such a case it would be the duty of the judges of the prize court, as British judges, to obey and to apply the statute.

It could not, of course [he said], be disputed that a prize court, like any other court, was bound by the legislative enactments of its own sovereign state. A British prize court would certainly be bound by acts of the Imperial Legislature. But it was none the less true that if the Imperial Legislature passed an act the provisions of which were inconsistent with the law of nations, the prize court in giving effect to such provisions would no longer be administering international law. It would in the field covered by such provisions be deprived of its proper function as a prize court. Even if the provisions of the act were merely declaratory of the international law, the authority of the court as an interpreter of the law of nations would be thereby materially weakened, for no one could say whether its decision were based on a due consideration of international obligations or on the binding nature of the act itself. The fact, however, that the prize courts in this country would be bound by acts of the Imperial Legislature afforded no ground for arguing that they were bound by the Executive Orders of the King in Council.

It would be easy to quote passages from British and American decisions that prize courts are courts of international law sitting in belligerent countries, that in the performance of their duties they administer

and are bound to administer the law of nations and to reject provisions of their municipal laws contrary to the law of nations. In this connection, *The Maria* (1 C. Rob., 340), *The Recovery* (6 C. Rob. 341), and *The Fox* (Edw. 312), all of which were decided by Lord Stowell, are frequently referred to, for the proposition that a prize court is an international court, bound to administer the law of nations.

On the other hand, decisions of American prize courts are not wanting to the effect that, international in theory, prize courts are in fact municipal. Thus, in the case of the *Amy Warwick* (2 Sprague 123), it was said:

Prize courts are subject to the instructions of their own sovereign. In the absence of such instructions their jurisdiction and rules of decision are to be ascertained by reference to the known powers of such tribunals and the principles by which they are governed under the public law and the practice of nations.

There can be no doubt that a court in which the rights of various nations, their subjects or citizens are determined should act in accordance with that law common to the parties, not by that law prescribed by one of them. In other words that international, not municipal, law should be administered. But it is believed that nothing is gained by claiming that prize courts are international courts when in fact they are municipal in location and composed of judges of the country in which they are situated, bound by their oath to obey the laws of their land. The proper thing to do is to create an international court of prize, as was recommended by the Second Hague Conference, to operate at The Hague and to be composed of judges of different nations, sworn to administer the law of nations, not the law of any one of them. Then will the views of Sir James Mackintosh, laid down by him in the case of The Minerva, be a statement of fact rather than a generous aspiration:

Undoubtedly the letter of the instructions was a sufficient warrant for His Majesty's officers for detaining ships which appeared to offend against it; but as to the doctrine that courts of prize were bound by illegal instructions, he had already in a former case (that of the *Erin*), treated it as a groundless charge by an American writer against English courts. In this case (which had hitherto been, and he trusted ever would continue, imaginary) of such illegal instructions, he was convinced that English courts of admiralty would as much assert their independence of arbitrary mandates as English courts of common law. That happily no judge had ever been called upon to de-

⁵ Quoted from Moore's Int. Law Dig., Vol. VII, p. 600.

termine, and no writer had distinctly put the case of such a repugnance. He had, therefore, no direct and positive authority; but he never could hesitate in asserting, that in such an imaginary case, it would be the duty of a judge to disregard the instructions, and to consult only that universal law to which all civilised princes and states acknowledge themselves to be subject, and over which none of them can claim any authority.

JAMES BROWN SCOTT.

THE INTERNATIONAL HIGH COMMISSION ON UNIFORMITY OF LAWS

The first general meeting at Buenos Aires, April 3–12, 1916, of the International High Commission on Uniformity of Laws created by the First Pan American Financial Conference was an event of supreme significance. Its great possibilities of service in laying the foundations for an effective international organization of the Republics of the Western Hemisphere make a striking appeal to the imagination.

The First Pan American Financial Conference was held in Washington May 24–29, 1915, in response to the invitation of the United States Government. All the American Republics were represented, except Mexico and Haiti. Its purpose was well set forth by the Honorable W. G. McAdoo, Secretary of the Treasury, in the following words:

The outbreak of the European War accentuated many of our problems, and brought clearly home to the American Republics the danger of complete dependence upon the great European states for their economic development and commercial security. All of them, including the United States, face at the beginning of the war the possibilities of appalling disaster. That experience clearly shows the imperative necessity for closer relations between the American states themselves and a more enduring organization of their own life in order that they may work out their destinies, freed as far as possible from the dangers which constantly menace their economic development through European complications. It was essential in these circumstances that the American nations should take measures for their own protection; that they should reconstruct, as far as practicable, their commercial and financial relationships for the security of their own interests and the welfare of their people.

The discussions of this conference centered about three main topics: (1) The granting by United States bankers and business men of ample credits to Latin America and the provision of the necessary organization and facilities for this purpose; (2) The prompt establishment of adequate

^o Life of the Right Honourable Sir James Mackintosh, Vol. I, pp. 317–319; Phillimore's Int. Law, Vol. III, p. 656.

steamship facilities between the leading ports of the United States and South America; and (3) Uniformity of laws concerning currency, exchange, merchandise, commercial travellers, patents, postal rates, etc., etc.

It was apparent that a permanent organization was necessary in order to give effect to the conclusions and recommendations of this conference. The International High Commission created for this purpose is a body consisting of nineteen national sections, each in turn consisting of nine jurists and financiers under the chairmanship of the Minister of Finance. Its object is to devise means of adjusting and harmonizing principles and procedure of commercial law and administrative regulation in the American Republics, and to work for the solution of legal problems in the fields of banking and public finance. It will hold biennial meetings and the work of the national sections will be coördinated and directed by a Central Executive Council of which the Secretary of the Treasury acts as President. In the words of Secretary McAdoo,

The work of the International High Commission will be the connecting link between the successive Pan American Financial Conferences which, for my part, I earnestly hope may become a part of the permanent policy of the American states. If such a financial conference shall be held every two years, with the International High Commission as the intermediate working body to carry into effect the conclusions of these conferences, we will no longer live in the realm of theories, but will make practical results of every conference certain.

The United States Section of the International High Commission has been duly authorized by Act of Congress, and is composed of the following members:

William G. McAdoo, Secretary of the Treasury, Chairman.

John Bassett Moore, Columbia University, Vice Chairman.

John H. Fahey, Boston, Massachusetts.

Duncan U. Fletcher, Jacksonville, Florida.

David R. Francis, St Louis, Missouri.

E. H. Gary, New York City.

A. B. Hepburn, New York City.

George M. Reynolds, Chicago.

Samuel Untermyer, New York City.

Leo S. Rowe of the University of Pennsylvania is Secretary of the Section, and Messrs. J. Brooks, B. Parker, and C. E. McGuire, Assistants to the Secretary General.

The United States Section left Hampton Roads on the armored cruiser Tennessee, March 8, 1916, visiting Haiti, Trinidad, Rio Janeiro, and Montevideo en route for Buenos Aires, which was reached April 1st. The formal sessions of the High Commission lasted from April 3 to April 12. The Commission was the object of lavish hospitality and the many festivities included an official reception by the President of the Argentine Republic, a banquet by the United States Ambassador, Frederick J. Stimson, a farewell banquet by Dr. José Luis Murature, Minister for Foreign Affairs, and a luncheon by the United States Section in honor of the Argentine Minister of Finance, Dr. Francisco J. Oliver. Leaving Buenos Aires on April 15th, the United States Section visited Chile, Peru, Panama, and Cuba, returning to Hampton Roads and Washington on May 4th. It was everywhere received with marked courtesies and cordiality.

The work of the International High Commission was divided among seven committees, whose reports and resolutions contain a wealth of data and findings on matters of vital importance for the welfare of the American Republics. It is obviously impossible to do more than summarize the more important features of this meeting.

The Commission recommended among other matters, the adoption of a "money of account" of a uniform standard; uniform legislation assuring the legal status of credits arising from the sale of merchandise; the publication by the Pan American Union of a commercial nomenclature and compendium of tariffs; uniform regulations for commercial travellers; and the calling of a special conference to consider the means of making uniform the maritime law of the American states.

Special mention should be made of the recommendation of the Commission that the American nations should adopt the convention on international commercial arbitration entered into by the Chamber of Commerce of Buenos Aires and Chamber of Commerce of the United States of America.

This project was originally presented by Dr. R. C. Aldao of the Argentine Republic at the First Pan American Financial Conference in Washington, 1915. Providing as it does for readily accessible and effective means for the immediate adjustment of international commercial disputes, it should prove a powerful agency for the avoidance of friction and the encouragement of that confidence and good will on which the intercourse of nations must depend.

The High Commission decided that a Pan American Financial Con-

ference should be held every two years, designating 1917 for the next conference, and Washington again as its place of meeting. The Commission also created the Central Executive Council already alluded to, "whose duty it shall be to centralize and coördinate the labors of the Commission, to keep the several Sections in constant touch with one another, to carry out the conclusions of the International High Commission and the Pan American Financial Conferences, and to prepare the program, reports and all other material necessary for the holding of the second meeting of the International High Commission."

History, both recent and remote, should conclusively demonstrate that international harmony cannot depend on good will alone, or on what Lord Haldane characterized as sittlichkeit. It rests ultimately on the just regulation of mutual interests. There can be no international peace where these interests are not clearly recognized, duly respected and legally protected. There can be no possibility of international organization until common understandings exist concerning the practical problems arising out of the normal intercourse of nations. There is perhaps a danger in exaggerating the influence of economic factors in history, but there can be no doubt that human affairs cannot be regulated by sentiment alone.

The International High Commission on Uniform Laws is thus a most memorable step towards the elimination of misunderstandings and the establishment of intimate cordial relations between the nations of the Western Hemisphere. The United States Constitution owed its inception to an unofficial conference of delegates at Annapolis to consider the mutual economic interests of the States of the Confederation.

May we not reasonably hope that the Pan American Financial Conferences and the International High Commission may prove the logical first steps towards an effective organization of the American nations which shall be based, not on sentiment alone, but on solid interests clearly defined and protected by uniform legislation?

PHILIP MARSHALL BROWN.

THE SECRETARY OF STATE ON THE VIOLATIONS OF INTERNATIONAL LAW
IN THE EUROPEAN WAR AS THEY AFFECT NEUTRALS

For the first time since his appointment as Secretary of State of the United States, on June 23, 1915, Mr. Lansing delivered an address, on June 3, 1916, before the Jefferson County Bar Association at Watertown, New York. The occasion was remarkable, in that it was a meet-

ing of Mr. Lansing's associates in Watertown and in northern New York and of his friends in his home town, who had gathered to do him honor and to welcome his home-coming as only friends and neighbors can welcome a distinguished and a beloved townsman.

Mr. Lansing seized the occasion, as they say in diplomacy, to explain frankly and in some detail the policy of the United States as a neutral in the great war and the difficulties which beset the government in its endeavor to perform its neutral duties and to cause its neutral rights to be respected by the belligerents which, as always happens in moments of excitement, are more intent upon their rights than upon the performance of their duties.

The first part of Mr. Lansing's address deals with the situation produced by the war, and as this statement of facts and conditions forms the ground work of the address, it is given in Mr. Lansing's own words. Thus, he says:

The Great War has caused so many conditions, which are entirely new, and presented so many questions which were never before raised or even thought of, that it has been no easy task to meet and answer them. The relations between neutrals and belligerents were never more difficult of adjustment. It was never harder to preserve neutral rights from invasion by the desperate opponents in the titanic conflict, in which the power, if not the life, of the great empires of the earth is at stake. The peoples and governments at war are blinded by passion; their opinions are unavoidably biased; their conduct is frequently influenced by hysterical impulses, which approach to madness. Patience and forbearance are essential to a neutral government in dealing with such nations. Acts, which under normal conditions would be most offensive, must be considered calmly and without temper. It is an extraordinary situation and requires extraordinary treatment with a due regard for the mental state of those who are straining every nerve to defeat their enemies and to that end using every possible means to weaken them in their industrial as well as their military power.

In a nutshell the situation of our relations with Great Britain and Germany, the two Powers with which we have had our principal controversies, is this:

Germany, having developed the submarine as an effective engine of destruction, asserts that she cannot, on account of the resulting conditions, conform to the established rules of naval warfare, and we should not, therefore, insist on strict compliance. Great Britain has no sympathy with the German point of view and demands that the submarine observe the rules of visit and search without exception.

On the other hand, Great Britain declares that, on account of the new conditions resulting from submarine activity and the use of mines and from the geographical position of Germany, she cannot conform to the established rules of blockade and contraband, and we should not, therefore, hold her to strict compliance with those rules. Germany insists, nevertheless, that Great Britain be made to follow the existing law.

Both governments have adopted the same arguments, based primarily on military necessity, and offer the same excuses for their illegal acts, but neither will admit that the other is in any way justified for its conduct.

After this statement of the effects and conditions as Mr. Lansing believes them to exist, and after giving the reasons which each belligerent advances or might advance in justification of its conduct, Mr. Lansing puts the very pertinent question, "What is the United States to do in these circumstances?" and, differing from most querists, he suggests the answer. Thus:

If we admit the arguments advanced are sound—and I am sure no one will deny that they are more or less reasonable—and submit to changes in the rules of naval warfare, we will be without any standard of neutral rights. Conceding that the rules can be modified by a belligerent to meet new conditions, how far can a belligerent go in changing the rules? Would not the liberties of neutrals on the high seas be at the mercy of every belligerent? As it is under the old rules, neutrals suffer enough when a state of war exists. They should not be further restricted in the exercise of their rights.

The only alternative, therefore, is for this government to hold firmly to those neutral rights which international law has clearly defined and to insist vigorously on their observance by all belligerents. In not the slightest degree can the settled rules be modified unless all the parties interested consent to the modifications.

If Germany finds it difficult or impossible to conform submarine warfare to the international naval code, that is her misfortune; or, if Great Britain finds it equally difficult to obey the rules of blockade and contraband, that is her misfortune. They certainly cannot expect neutral nations to submit without resistance to further invasions of their rights.

This has been the position of the United States from the beginning of the war. It has twice sought to obtain mutual consent from the belligerents to certain changes in the rules, but in both cases it failed and the suggestions were withdrawn.

Mr. Lansing next notes that the violations of international law result in the loss of life, on the one hand, and in injury to property, on the other. He calls attention to this fact and properly states that, although the loss of life and the injury to property result in each case from violation of the law of nations, nevertheless the seriousness of the violation depends in no uncertain degree upon its consequences; that is to say, whether it cause the loss of life or merely an injury to property. Thus:

It is true that the rights violated by the belligerents may differ in importance and, therefore, require different treatment. Thus the violation of the neutral right of life is a much more serious offense against an individual and against his nation than the violation of the legal right of property. There is no and cannot be adequate recompense for the wrongful destruction of life, but property losses may be satisfied by the payment of indemnities. If one belligerent violates the right of life and an-

other belligerent violates the right of property, can you doubt for a moment which one gives this government the greatest concern, or which one will call forth the more vigorous protest and the more earnest effort to prevent repetitions of the offense?

A government which places life and property on an equality would be generally condemned, and justly condemned.

In concluding his address, Mr. Lansing spoke feelingly to the friends and associates of his boyhood and his maturer years, and in so doing used language which is capable of a wider appeal and which is calculated to awaken a responsive chord in his fellow countrymen.

I know that you [he said], my friends and associates, all patriotic and thoughtful Americans, sympathize with me in the responsibilities which today rest upon me as Secretary of State. Whatever may happen in the uncertainties of the future I know that I can come back here assured of your friendly judgment and of a just estimate of the motives which have inspired my acts. Your friendship and your confidence I prize most highly. I hope that I may always merit them.

It should be and it is a consolation to the American people to know that, in these days of storm and stress, there is a calm and dispassionate, thoughtful and upright man in charge of the Department of State, not carried away by his feelings yet aware of their existence and not deaf to their voice, and desiring the friendship of his associates and the confidence of his fellow countrymen because he strives, earnestly and with singleness of purpose, to merit them.

James Brown Scott.

THE STUDY AND TEACHING OF INTERNATIONAL LAW

A report of the Standing Committee on the Study and Teaching of International Law and Related Subjects was presented to the American Society of International Law at the annual Meeting. The report of the Committee was unanimous and was approved by the Society.

This report was in continuance of the work begun by the Conference of Teachers of International Law and Related Subjects in 1914, which adopted sixteen resolutions for carrying out its wishes. So far as these were largely administrative, the resolutions were immediately carried out. Certain resolutions involving investigation and further consideration were referred to the Standing Committee. These resolutions in general referred to the plans for developing the study of international law and related subjects. The Committee was unfavorable to any attempt to standardize such study, but was favorable to the adoption of means for improving, extending and strengthening such study in a thorough manner. The course of events in the world since the Con-

ference of Teachers in 1914 has emphasized the need of such an effort.

Certain points in the Standing Committee's report should be particularly mentioned. A course of one year "divided between international law as a system of law and the application of its principles in international relations is regarded as a minimum" (and that a full year or more should be given to each was to be desired when possible.) That these courses should be consecutive rather than concurrent seemed to be advisable.

The Conference of Teachers in 1914 had recommended "That prominent experts in international law be invited from time to time to lecture upon the subject at the several institutions." The Standing Committee favored this plan "provided such lectures were made an integral part of the course," for which the student should be prepared and for which he should be responsible as for other parts of the course. Other resolutions were considered and the action upon these will be found in the Proceedings of the Annual Meeting of the Society, in which the Committee's report will also be found in full.

The Division of International Law of the Carnegie Endowment, believing this work recommended by the Conference of Teachers to be in accord with its purposes, has offered to place at the disposal of the Standing Committee an amount of money to aid in the work. The Standing Committee will be glad to receive further suggestions as to the carrying out of the resolutions or as to other matters relating to the promotion of the study and teaching of international law and related subjects. The Standing Committee is composed as follows, and such suggestions may be made to any member of the Committee:

Chairman, Professor George Grafton Wilson, of Harvard University.

Professor Philip Marshall Brown, of Princeton University.

Professor Amos S. Hershey, of Indiana University.

Professor Charles Cheney Hyde, of Northwestern University.

sity.

President Harry Pratt Judson, of the University of Chicago. Honorable Robert Lansing, Secretary of State.

Professor Jesse S. Reeves, of the University of Michigan.

Mr. Alpheus H. Snow, of Washington, D. C.

Secretary ex officio, Mr. James Brown Scott, Recording Secretary of the Society.

GEORGE GRAFTON WILSON.

MEXICO AND THE UNITED STATES AND ARBITRATION

From time to time the Journal has had comments upon the Mexican situation in so far as its international aspects are concerned and in so far as the disturbed condition in Mexico affects the relations of Mexico and the United States. The comments have aimed to lay before the readers of the Journal the facts as they are contained in official documents, as it is very difficult to obtain facts from other sources and, if obtained, it is equally, if not more difficult to sift them, separating the true from the false. In view of these circumstances, it has been deemed the policy of wisdom to avoid the expression of opinion, because an opinion based upon alleged facts or conditions resulting from alleged facts must necessarily fall or be modified when the facts themselves prove to be false or only partially correct.

The present comment will follow the policy herein stated. It will regard Mexico as a member of the society of nations; therefore, as a sovereign and independent state, and in law the equal of every other sovereign and independent state, with rights and duties precisely the same as the rights and duties of the other sovereign and independent states. It will consider the government of Carranza as the existing government of Mexico, recognized as such by the United States on October 19, 1915, and that General Carranza as the head of that government is entitled to speak for it in foreign matters and is required to meet and to fulfill the duties imposed upon his country by the law of nations.

Without stating either the rights or duties in general of Mexico and the United States in the premises, the present comment calls attention to the Treaty of Guadalupe Hidalgo, concluded February 2, 1848, between the two countries and proclaimed by the President of the United States as the law of the land on July 4, 1848, which, ending a war, sought to provide a means in Article XXI which would render war between the two countries more remote, if not impossible. Article XXI says:

If unhappily any disagreement should hereafter arise between the governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account,

be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it be not better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.¹

It will be observed that this article is what may be called "all inclusive," to use an expression of the hour, for not only the treaty but the political or commercial relations of the two governments are to be subjected to the procedure prescribed in Article XXI. It will be observed that arbitration is not compulsory, to use another expression of the day, as each of the contracting parties is left free to decide whether the course laid down in Article XXI is in its opinion "altogether incompatible with the nature of the difference or the circumstances of the case." The comment leaves the article and the treaty where it finds it, to the interpretation and application of the governments of the two countries.

It has long been the effort of friends of peace, especially in this country, to persuade the nations to agree to submit their outstanding difficulties to arbitration, and indeed to bind themselves by solemn agreement to submit future differences or disputes to arbitration. This general policy was proposed, not only in abstract but in concrete form, by William Jay, whose position in the peace movement is little inferior to that of his distinguished father, who, by the treaty which bears his name, introduced arbitration again into the practice of nations.

In 1842 William Jay published in England and the United States a little book entitled War and Peace: The Evils of the First and a Plan for Preserving the Last, in which he recommended that the nations should bind themselves by treaty to submit their present as well as their future disputes to arbitration. He believed that a great principle should be tried under the most favorable conditions, and he therefore proposed that the first treaty of this kind should be made with France, between which country and the United States there were then no disputes, and it seemed probable to Mr. Jay that disputes of a serious kind would not arise between them. Mr. Jay's proposal follows in his own words:

¹ Malloy's Treaties and Conventions between the United States and other Powers, Vol. I, p. 1117.

Suppose in our next treaty with France an article were inserted of the following import:

"It is agreed between the contracting parties that if, unhappily, any controversy shall hereafter arise between them in respect to the true meaning and intention of any stipulation in this present treaty, or in respect to any other subject, which controversy cannot be satisfactorily adjusted by negotiation, neither party shall resort to hostilities against the other; but the matter in dispute, shall, by a special convention, be submitted to the arbitrament of one or more friendly Powers; and the parties hereby agree to abide by the award which may be given in pursuance of such submission." ²

It is difficult to estimate the exact influence of any book or pamphlet. The ideas stated in Mr. Jay's little work appear, at least to the writer of this comment, to be so reasonable as to suggest themselves to negotiators without being specially called to their attention. It is very difficult to say when an idea first took definite form and shape and, in describing a proposition of one, we often overlook another worthy person whose claims should be borne in mind.

Without attempting to claim for William Jay the authorship of what is now familiarly termed in French the clause compromissoire, it is believed that a clearer and more statesmanlike formulation of it than his is not to be found, and, without attempting to maintain that Article XXI of the treaty between Mexico and the United States is due to Jay's proposal, it is interesting to note in this connection that Jay's little book appeared in 1842, just six years before the conclusion of the treaty between Mexico and the United States, that it was widely circulated in the United States as well as in England, that its distinguished author was deeply interested in the relations between Mexico and the United States, and well informed as to their relations as evidenced by his admirable book entitled A Review of the Causes and Consequences of the Mexican War, published a year after its termination, and that he was a man of great influence, due not only to his family connections, but to his own ability, integrity and high ideals. The writer of the brief sketch of Jay appearing in the 11th edition of the Encyclopedia Britannica felt justified in saying that "his pamphlet, War and Peace: The Evils of the First, with a Plan for Securing the Last, advocating international arbitration, was published by the English Peace Society in 1842, and is said to have contributed to the promulgation by the Powers signing the Treaty of Paris in 1856 of a protocol expressing the wish that nations, before resorting to arms, should have recourse to the good

² War and Peace: American edition, pp. 81-82; English edition, p. 40.

offices of a friendly Power." This statement is quoted and indeed the reference to Jay is made to show that those ideas were in the air in the 40's and in the 50's, and to express the hope that they may also be found to be in the air in this year of trial and tribulation.

JAMES BROWN SCOTT.

THE SO-CALLED INVIOLABILITY OF THE MAILS

Recent correspondence between the Allied and United States Governments has called renewed attention to the so-called inviolability of postal correspondence on the high seas during maritime warfare.

The Eleventh Hague Convention Relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime Warfare declares:

The postal correspondence of neutrals or belligerents, whether official or private in character, found on board a neutral or enemy ship is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port (Art. I).

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war respecting neutral merchant ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible (Art. 2).

These proposals were made by Germany at the Second Hague Conference of 1907, and were supported by an argument on the part of Herr Kriege, one of the members of the German delegation, which cannot be said to have much applicability to the circumstances of the present war. Herr Kriege said:

Postal relations have at our epoch such importance—there are so many interests commercial or other, based on the regular service of the mail—that it is highly desirable to shelter it from the perturbations which might be caused by maritime war. On the other hand, it is highly improbable that the belligerents who control means of telegraphic and radio-telegraphic communication would have recourse to the ordinary use of the mail for official communications as to military operations. The advantage to be drawn by belligerents from the control of the postal service therefore bears no prejudicial effect of that control on legitimate commerce.

It cannot be said that the Eleventh Convention of 1907 is legally binding in this war; it was not signed by Russia, one of the leading belligerents, and it has not been ratified by more than half of the states represented at the Second Hague Conference.

In any case the provisions of the first paragraph of Article I do not

apply, "in case of violation of blockade, to correspondence destined for or proceeding to a blockaded port." For reasons best known to themselves, the Allied Governments of France and Great Britain have not sought shelter either under this provision or under the plea that the Eleventh Convention is not legally binding—pleas which they might have entered with entire justice and propriety.

Prior to the limited adoption of the Hague Convention dealing with this subject, the doctrine relative to the inviolability of mails was doubtful, and the practice by no means uniform. For example, Hall, after admitting that ordinary letters are *prima facie* innocent, and that they should only be seized under very exceptional circumstances, goes on to say:

At the same time it is impossible to overlook the fact that no national guarantee of the innocence of the contents of a mail can really be offered by a neutral Power. No government could undertake to answer for all letters passed in the ordinary manner through its post-offices. To give immunity from seizure as of right to neutral mail-bags would therefore be equivalent to resigning all power to intercept correspondence between the hostile country and its colonies, or a distant expedition sent out by it, and it is not difficult to imagine occasions when the absence of such power might be a matter of grave importance. Probably the best solution of the difficulty would be to concede immunity as a general rule to mail-bags, upon a declaration in writing being made by the agent of the neutral government on board that no dispatches are being carried for the enemy, but to permit a belligerent to examine the bags upon reasonable grounds of suspicion being officially stated in writing. (Hall, 5th ed., pp. 675, 679–680.)

Lawrence treats this matter very fully in his War and Neutrality in the Far East (pp. 185ff.). He says:

In recent times a practice has grown up of granting special favors to such mailboats in time of war, if they are neutral and willing to accept the conditions imposed. The United States has been the pioneer in this matter. During her war with Mexico she allowed British mail-steamers to pass unmolested in and out of the port of Vera Cruz, which came into her possession for a time in 1847. In 1862, when the American Civil War was at its height, the Government of Washington exempted from search the public mails of any neutral Power, if they were duly sealed and authenticated, but it was added that the exemption would not protect "simulated mails verified by forged certificates and counterfeit seals." If a vessel carrying mails rendered itself subject to capture for other reasons, she might be seized, but the mail-bags were to be forwarded unopened to their destination. The example thus set was followed by France in 1870. At the commencement of her great war with Germany she announced that she would take the word of the official in charge of the letters on board a regular mail-steamer of neutral nationality as to the absence of any noxious communications. The proclamation of President McKinley at the beginning of the war with Spain in

1898 went further still. It declared that "the voyages of mail-steamers are not to be interfered with, except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade." A similar indulgence was granted by Great Britain in the course of the Boer War to steamers flying the German mail-flag. They were not to be stopped on mere suspicion that there might be unlawful despatches in their bags. On the other hand, many modern cases may be mentioned where no indulgence, or a very limited one, was given. For instance, in 1898 Spain did not duplicate the American concession, and in 1902 Great Britain and Germany would not allow neutral mail-steamers to pass through their blockade of Venezuelan ports, but stopped them instead, and after overhauling their correspondence and detaining what seemed noxious, sent the rest ashore in boats belonging to the blockading squadron.

We see then that practice is by no means uniform. It is impossible, therefore, to argue that the usage of the last half-century has conferred upon the vehicles of the world's commercial and social communications an immunity from belligerent search which they did not before possess. The utmost we can venture to assert is that such a usage is in process of formation, and is in itself so convenient that it ought to become permanent and obligatory, due security being taken against its abuse. This last condition will be difficult of attainment. No government agent on board a mailsteamer can be aware of the contents of the letters for which he is responsible. There would be a terrible outcry if he took means to make himself acquainted with them. His assurance, therefore, as to the innocence of the communications in his bags can be worth but little, even though it is given in all good faith. States must face the fact that to grant immunity will mean that their adversaries in war will use neutral mailboats for the conveyance of noxious despatches made up to look like private correspondence. Probably it will be worth while to take the risk of this rather than dislocate the affairs of half a continent by capturing and delaying its correspondence. While general freedom was given, it might be wise to reserve a right of search and seizure in circumstances of acute suspicion.

Many other authorities, including French and German ones, might be cited to show that, prior to the meeting of the Hague Conference of 1907, the immunity of mail-bags from search was far from established. Nor can the ratification of the Eleventh Hague Convention by less than half the members of the International Comity (if such an entity exists) be said to have created a new and binding rule in international law.

However, it is an omen of good augury that the United States and the Allied Governments, in their recent correspondence on the subject, were able to agree on general principles, though they differed somewhat in their application.

In the first place, all the Powers (apparently including even Germany) are agreed that post parcels constitute merchandise which may be seized and, under certain circumstances, confiscated.

Furthermore, the United States Government apparently agrees with

the Allies that "merchandise hidden in the wrappers, envelopes, or letters, contained in the mail-bags" may be seized.

In the next place, the United States and Allied Governments agree that "genuine correspondence" is inviolable, but the United States does not admit that "belligerents may search other private sea-borne mails for any other purpose than to discover whether they contain articles of enemy ownership carried on belligerent vessels or articles of contraband transmitted under sealed cover as letter mail," except in the case of an effective blockade.

The gist of the complaint of the United States is that the Allied Governments have seized and confiscated mail from vessels in port instead of at sea.

They compel neutral ships without just cause to enter their own ports or they induce shipping lines, through some form of duress, to send their mail ships via British ports, thus acquiring by force or unjustifiable means an illegal jurisdiction. Acting upon this enforced jurisdiction, the authorities remove all mails, genuine correspondence as well as post parcels, take them to London, where every piece, even though of neutral origin and destination, is opened, and critically examined to determine the "sincerity of their character," in accordance with the interpretation given that undefined phrase by the British and French censors. Finally the expurgated remainder is forwarded, frequently after irreparable delay, to its destination. Ships are detained en route to or from the United States or to or from other neutral countries, and mails are held and delayed for several days and, in some cases, for weeks and even months, even though not routed to parts of North Europe via British ports. * * * The British and French practice amounts to an unwarranted limitation on the use by neutrals of the world's highway for the transmission of correspondence.

It may thus be seen that the difference is one of application or mode of procedure. It is the question as to whether the right of visit and search must continue to be exercised on the high seas; or whether, under the circumstances of changed methods of transportation, of improved modern devices for evading discovery, and of the dangers from submarines, the rules pertaining to the mode of exercising the right of search must not be modified so as to meet present-day conditions. On this point the Allies would seem to have the better of the argument. The attitude of the United States appears to be needlessly obstructive, legalistic, and technical. We stand upon the letter rather than the spirit of our rights.

The Memorandum presented by the Allied Governments of France and Great Britain on February 15, 1916, contains one palpable hit:

Between December 31, 1914 and December 31, 1915, the German or Austro-Hungarian naval authorities destroyed, without previous warning or visitation, 13

mail ships with their mail-bags on board, coming from or going to neutral or Allied countries, without any more concern about the inviolability of the dispatches and correspondence they carried than about the lives of the inoffensive persons aboard the ships.

It has not come to the knowledge of the allied governments that any protest touching postal correspondence was ever addressed to the Imperial Governments.

Is not our Government in this matter straining at a gnat and swallowing a camel?

Amos S. Hershey.

THE CASE OF VIRGINIA v. WEST VIRGINIA

On June 14, 1915, in the case of Virginia v. West Virginia (238 U. S. 202), the Supreme Court of the United States awarded Virginia the sum of \$12,393,929.50, to be paid by West Virginia with interest thereon at the rate of five per centum from July 1, 1915, until paid. In this most recent decision of the Supreme Court in this long drawn-out and carefully argued case, decided on June 12, 1916, Virginia petitioned a writ of execution against West Virginia "on the ground that such relief is necessary as the latter has taken no steps whatever to provide for the payment of the decree." West Virginia resisted the petition for three reasons, which are thus stated by Chief Justice White, delivering the opinion of the Supreme Court:

(1) Because the State of West Virginia, within herself, has no power to pay the judgment in question, except through the legislative department of her government, and she should be given an opportunity to accept and abide by the decision of this court, and, in the due and ordinary course, to make provision for its satisfaction, before any steps looking to her compulsion be taken; and to issue an execution at this time would deprive her of such opportunity, because her legislature has not met since the rendition of said judgment, and will not again meet in regular session until the second Wednesday in January, 1917, and the members of that body have not yet been chosen; (2) because presumptively the State of West Virginia has no property subject to execution; and (3) because although the Constitution imposes upon this court the duty, and grants it full power, to consider controversies between States and therefore authority to render the decree in question, yet with the grant of jurisdiction there was conferred no authority whatever to enforce a money judgment against a State if in the exercise of jurisdiction such a judgment was entered.

These objections on the part of West Virginia are of a kind to give the jurist pause, although they do not seem to impress the layman, who believes that a court cannot be a court unless it has power to compel the appearance of a State before its bar, and unless it has power to execute its judgments against a State by force. The Supreme Court, however, is not composed of laymen, as its carefully considered and wonderfully brief judgment in this case shows:

Without going further [Chief Justice White says, speaking for the court, after stating the three objections of West Virginia], we are of the opinion that the first ground furnishes adequate reason for not granting the motion at this time.

The prayer for the issue of a writ of execution is therefore denied without prejudice to the renewal of the same after the next session of the legislature of the State of West Virginia has met and had a reasonable opportunity to provide for the payment of the judgment.

The procedure of the Supreme Court in the matter of suits between states is as important as it is interesting, and it is believed that it might be of more than passing interest to note some of the cases of suits between states and the practice and procedure of the Supreme Court in such matters.

Article III, Section 2, of the Constitution extends the judicial power of the United States "to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; * * * to controversies between two or more States," and the Supreme Court is vested with original jurisdiction in cases "in which a State shall be a party." The Supreme Court has, therefore, jurisdiction of a case by a State against another State of the American Union, but as a court it can merely take jurisdiction of a case involving law or equity. It naturally and necessarily follows that the court must determine whether the case presented to it is one involving law or equity; that is to say, the Supreme Court is obliged to determine upon the threshhold whether or not the case is justiciable.

The right of a court so to do seems to be inherent and to be equally well settled in international as in national law. Thus, Lord Loughborough held that the Mixed Commission, organized under Article 7 of the Jay Treaty, must determine its jurisdiction, stating "that the doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd; and that they must necessarily decide upon cases being within, or without, their competency." (Moore's International Abitrations, Vol. I, p. 327.) The question arose and was elaborately considered in the case of Rhode Island v. Massachusetts (12 Peters 657), decided in 1838, in which Massachusetts objected to the

jurisdiction of the court on the ground that the question (one of boundary) involved sovereignty, which was a political, not a judicial, question. In delivering the judgment of the court, Mr. Justice Baldwin said:

Before we can proceed in this cause, we must, therefore, inquire whether we can hear and determine the matters in controversy between the parties, who are two States of this Union, sovereign within their respective boundaries, save that portion of power which they have granted to the federal government, and foreign to each other for all but federal purposes.

* * Those States * * * adopted the constitution, by which they respectively made to the United States a grant of judicial power over controversies between two or more States. By the Constitution, it was ordained, that this judicial power, in cases where a State was a party, should be exercised by this court as one of original jurisdiction. The States waived their exemption from judicial power (6 Wheat. 378, 380), as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant, this court has acquired jurisdiction over the parties in this cause, by their own consent and delegated authority; as their agent for executing the judicial power of the United States in the cases specified.

As to the distinction between a political and a judicial question, Mr. Justice Baldwin, speaking for the court, said:

The founders of our government could not but know, what has ever been, and is, familiar to every statesman and jurist, that all controversies between nations, are, in this sense, political and not judicial, as none but the sovereign can settle them. In the Declaration of Independence, the States assumed their equal station among the Powers of the earth, and asserted that they could of right do, what other independent states could do, "declare war, make peace, contract alliances," of consequence, to settle their controversies with a foreign Power, or among themselves, which no State, and no Power, could do for them. They did contract an alliance with France, in 1778; and with each other, in 1781; the object of both was to defend and secure their asserted rights as states; but they surrendered to Congress, and its appointed court, the right and power of settling their mutual controversies; thus making them judicial questions, whether they arose on "boundary, jurisdiction or any other cause whatever." There is neither the authority of law or reason for the position, that boundary between nations or states, is, in its nature, any more a political question, than any other subject on which they may contend. None can be settled without war or treaty, which is by political power; but under the old and new confederacy, they could and can be settled by a court constituted by themselves, as their own substitutes, authorized to do that for states, which states alone could do before. We are thus pointed to the true boundary line between political and judicial power and questions. A sovereign decides by his own will, which is the supreme law within his own boundary (6 Pet. 714; 9 Ibid. 748;) a court or judge decides according to the law prescribed by the sovereign power, and that law is the rule for judgment. The submission by the sovereigns, or states, to a court of law or equity, of a controversy between them, without prescribing any rule of decision, gives power

to decide according to the appropriate law of the case (11 Ves. 294); which depends on the subject-matter, the source and nature of the claims of the parties, and the law which governs them. From the time of such submission, the question ceases to be a political one, to be decided by the sic volo, sic jubeo, of political power; it comes to the court, to be decided by its judgment, legal discretion and solemn consideration of the rules of law appropriate to its nature as a judicial question, depending on the exercise of judicial power; as it is bound to act by known and settled principles of national or municipal jurisprudence, as the case requires. * *

These considerations lead to the definition of political and judicial power and questions; the former is that which a sovereign or state exerts by his or its own authority, as reprisal and confiscation (3 Ves. 429); the latter is that which is granted to a court or judicial tribunal. So, of controversies between states; they are in their nature political, when the sovereign or state reserves to itself the right of deciding of it; makes it "the subject of a treaty, to be settled as between states independent," or "the foundation of representations from state to state." This is political equity, to be adjudged by the parties themselves, as contradistinguished from judicial equity, administered by a court of justice, decreeing the equum et bonum of the case, let who or what be the parties before them. (Rhode Island v. Massachusetts, 12 Pet. 657, 720, 736–738.)

It thus appears from this that the Supreme Court of the United States, invested by the Constitution with original jurisdiction in suits between States of the Union, passes upon and determines its competency, and in so doing necessarily decides whether the particular question submitted to it is properly within its jurisdiction; that is to say, whether it is justiciable, in the sense that it involves law or equity.

If the States in controversy accept the jurisdiction of the court and appear by counsel, the case takes the usual course, resulting in a judgment for plaintiff or defendant. The question, however, early arose, how the defendant State should be summoned before the court, whether its presence could be compelled or whether, in its absence, the plaintiff could present his case ex parte and judgment be rendered by default.

In the case of New Jersey v. New York (3 Peters 461), decided by the Supreme Court in 1830, the State of New York did not appear and the State of New Jersey asked for a *subpæna* to be issued against New York to appear by counsel and argue the question. Chief Justice Marshall, delivering the opinion of the court, said:

As no one appears to argue the motion on the part of the State of New York, and the precedent for granting the process has been established upon very grave and solemn argument, in the case of Chisholm v. State of Georgia, 2 Dall. 419, and Grayson v. State of Virginia, 3 *Ibid.*, 320, the court do not think it proper to require an exparte argument in favor of their authority to grant the subpana, but will follow the precedent heretofore established. The court are the more disposed to adopt this

course, as the State of New York will still be at liberty to contest the proceeding, at a future time, in the course of the cause, if it shall choose to insist upon the objection.

This case decided that the plaintiff was entitled to a *subpæna* against the defendant State. Should the defendant State, however, refuse to appear, does the court compel the appearance of the defendant or does the court allow the plaintiff to proceed *ex parte* in the absence of the defendant?

This situation arose in a later stage of the case of New Jersey v. New York (5 Peters 284), decided by the Supreme Court in 1831. In this very important case Chief Justice Marshall considered the suits which had already been entertained between State and State and summarized the procedure, stating that service of process of the court upon governor and Attorney General of the State sixty days before the return day of the process is sufficient service, and that upon failure of the defendant State to appear and to litigate the case after proof of such service, the court would allow the plaintiff to proceed ex parte in the absence of the defendant. Thus, Chief Justice Marshall said, speaking for the court:

It has, then, been settled by our predecessors, on great deliberation, that this court may exercise its original jurisdiction in suits against a State, under the authority conferred by the Constitution and existing acts of Congress. The rule respecting the process, the persons on whom it is to be served, and the time of service, are fixed. The course of the court on the failure of the State to appear, after the due service of process, has been also prescribed.

In this case, the subpana has been served, as is required by the rule. The complainant, according to the practice of the court, and according to the general order made in the case of Grayson v. Commonwealth of Virginia has a right to proceed ex parte; and the court will make an order to that effect, that the cause may be prepared for a final hearing. If, upon being served with a copy of such order, the defendant shall still fail to appear, or to show cause to the contrary, this court will, as soon thereafter as the cause shall be prepared by the complainant, proceed to a final hearing and decision thereof. But inasmuch as no final decree has been pronounced or judgment rendered in any suit heretofore instituted in this court against a State, the question of proceeding to a final decree will be considered as not conclusively settled, until the cause shall come on to be heard in chief.

The plaintiff may, however, prefer to have the defendant State appear by appropriate counsel and to have the case litigated in its presence. The question arises whether coercive measures will be used against the defendant State in order to compel its appearance. This situation arose in the case of Massachusetts v. Rhode Island (12 Peters 755), decided in 1838. In the case of Rhode Island v. Massachusetts (12 Peters 655);

already referred to, Massachusetts appeared by counsel to deny the jurisdiction of the court. After the decision in favor of accepting jurisdiction, Daniel Webster, who had argued the case for Massachusetts, moved the court "for leave to withdraw the plea filed on the part of that State; and also to withdraw the appearance heretofore entered for the State." In delivering the opinion of the court, Mr. Justice Thompson considered the procedure in cases of this kind, and showed the successive steps by which that procedure had been moulded by the court, after which he thus proceeded:

By such proceedings, therefore, showing progressive stages in cases towards a final hearing, and in accordance with this course of practice; the court, in the case of New Jersey v. New York [5 Pet. 287], adopted the course prescribed by the general order made in the case of Grayson v. Commonwealth of Virginia [3 Dall. 320]; and entered a rule, that the subpæna having been returned, executed sixty days before the returnday thereof, and the defendant having failed to appear, it is decreed and ordered, that the complainant be at liberty to proceed ex parte; and that unless the defendant, on being served with a copy of this decree, shall appear and answer the bill of the complainant, the court will proceed to hear the cause on the part of the complainant, and decree on the matter of the said bill. So that the practice seems to be well settled, that in suits against a State, if the State shall refuse or neglect to appear, upon due service of process, no coercive measure will be taken to compel appearance; but the complainant, or plaintiff, will be allowed to proceed ex parte.

If, upon this view of the case, the counsel for the State of Massachusetts shall elect to withdraw the appearance heretofore entered, leave will accordingly be given; and the State of Rhode Island may proceed ex parte. And if the appearance is not withdrawn, as no testimony has been taken, we shall allow the parties to withdraw or amend the pleadings; under such order as the court shall hereafter make.

It thus appears that the defendant State is summoned in order that it may know the case in which it is expected to appear and to contest, but that if it fails to appear, or if it appears and asks that its appearance be withdrawn, the case will proceed against it in its absence; and its appearance may even be withdrawn, because appearance seems to be voluntary. The question next arises as to the procedure to be followed in the trial and disposition of the case.

In a later stage of the case of Rhode Island v. Massachusetts (14 Peters 210), decided by the Supreme Court in 1840, Chief Justice Taney, speaking for the court, discussed the question of procedure and stated it to be as follows:

The case to be determined is one of peculiar character, and altogether unknown in the ordinary course of judicial proceedings. It is a question of boundary between two sovereign states, litigated in a court of justice; and we have no precedents to

guide us in the forms and modes of proceedings, by which a controversy of this description can, most conveniently, and with justice to the parties, be brought to a final hearing. The subject was, however, fully considered at January term 1838, when a motion was made by the defendant to dismiss this bill. Upon that occasion, the court determined to frame their proceedings according to those which had been adopted in the English courts, in cases most analogous to this, when the boundaries of great political bodies had been brought into question. And acting upon this principle, it was then decided, that the rules and practice of the court of chancery should govern in conducting this suit to a final issue. The reasoning upon which that decision was founded, is fully stated in the opinion then delivered; and upon reexamining the subject, we are quite satisfied as to the correctness of this decision (12 Peters 735, 739).

The proceedings in this case will, therefore, be regulated by the rules and usages of the court of chancery. Yet, in a controversy where two sovereign states are contesting the boundary between them, it will be the duty of the court to mould the rules of chancery practice and pleading, in such a manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of chancery pleading. And if it appears that the plea put in by the defendant may in any degree embarrass the complainant in bringing out the proofs of her claim, on which she relies, the case ought not to be disposed of on such an issue. Undoubtedly, the defendant must have the full benefit of the defence which the plea discloses; but at the same time, the proceedings ought to be so ordered as to give the complainant a full hearing upon the whole of her case. In ordinary cases between individuals, the court of chancery has always exercised an equitable discretion in relation to its rules of pleading whenever it has been found necessary to do so for the purposes of justice. And in a case like the present, the most liberal principles of practice and pleading ought, unquestionably, to be adopted, in order to enable both parties to present their respective claims in their full strength.

The course determined on recommends itself strongly to the court, because it appears to be the only mode in which full justice can be done to both parties. Each will now be able to come to the final hearing, upon the real merits of their respective claims, unembarrassed by any technical rules. Such, unquestionably, is the attitude in which the parties ought to be placed in relation to each other. If the defendant supposes that the bill does not disclose a case which entitled Rhode Island to the relief she seeks, the whole subject can be brought to a hearing by a demurrer to the bill. If it is supposed, that any facts are misconceived by the complainants, and, therefore, erroneously stated, the defendants can put these in issue by answering the bill. The whole case is open; and upon the rule to answer which the court will lay upon the defendant, Massachusetts is entirely at liberty to demur or answer, as she may deem best for her own interests.

Finally, the question arises, whether a decision of the Supreme Court in the case of a suit between States will be executed by force? This question arose and was elaborately considered by the Supreme Court in a case involving interstate rendition under the Constitution and Act

of Congress of 1793 prescribing procedure. Chief Justice Taney, speaking for a unanimous court, said:

It [the Act of 1793] does not purport to give authority to the State Executive to arrest and deliver the fugitive, but requires it to be done, and the language of the law implies an absolute obligation which the State authority is bound to perform. And when it speaks of the duty of the Governor, it evidently points to the duty imposed by the Constitution in the clause we are now considering. The performance of this duty, however, is left to depend on the fidelity of the State Executive to the compact entered into with the other States when it adopted the Constitution of the United States, and became a member of the Union. It was so left by the Constitution, and necessarily so left by the Act of 1793.

And it would seem that when the Constitution was framed, and when this law was passed, it was confidently believed that a sense of justice and of mutual interest would insure a faithful execution of this constitutional provision by the Executive of every State, for every State had an equal interest in the execution of a compact absolutely essential to their peace and well-being in their internal concerns, as well as members of the Union. Hence the use of the words ordinarily employed when an undoubted obligation is required to be performed, "it shall be his duty."

But if the Governor of Ohio refuses to discharge this duty, there is no power delegated to the General Government, either through the Judicial Department or any other department, to use any coercive means to compel him. (Kentucky v. Dennison, 24 Howard 66.)

It thus appears that the Supreme Court of the United States has original jurisdiction in suits between States of the American Union; that the causes in dispute shall involve law or equity; that the court necessarily passes upon its competence and decides whether or not the particular case be within its jurisdiction, that is to say, that it involves law or equity; that upon assuming jurisdiction a subpana will be issued in behalf of the complaining State against the defendant State; that upon failure of the defendant to appear the court will retain jurisdiction of the case and allow the plaintiff to continue the case ex parte; that the defendant, having appeared, may withdraw its appearance; that the presence of the defendant State will not be compelled; that the procedure appropriate between individuals will be modified by the court in such a way as to afford the States in litigation full opportunity to have the case decided on its merits; that in the absence of the defendant judgment will be rendered by default; and finally, that the judgment against the State is not subject to execution by force, as is the case in disputes between individuals.

The decision of the Supreme Court in the long drawn-out controversy between Virginia and West Virginia will be awaited with no ordinary interest, as it involves a question of very great importance in that due process of law which does and must exist between the States, if justice is to be administered through courts of justice.

JAMES BROWN SCOTT.

THE VON IGEL CASE

The von Igel case raises certain interesting questions of diplomatic privilege, the facts publicly reported being as follows:

In April last Herr Wolf von Igel, former secretary of Captain von Papen, was arrested in his New York office and his papers seized. These were said to contain evidence of their owners' complicity in conspiracies against the neutrality of the United States, along with the revelation of others implicated with him. Copies were made of some or all of these. Against this action Count Bernstorff protested, claiming von Igel to be an attaché of the German Embassy and the papers therefore Embassy documents privileged from seizure.

The Department of State replied that the actions complained of were committed before von Igel became connected with the German Embassy. As to the papers, von Bernstorff was asked to identify what belonged to the Embassy. This request was thought to be an embarrassing one, since copies were kept and responsibility for unfriendly acts might thus be held to be confessed. The request was refused.

Assuming that the facts are correctly stated, the questions at issue appear to be:

- 1. Does subsequent connection with a foreign embassy or legation wipe out the liability for acts previously committed?
- 2. May a foreign diplomatic agent claim at will any papers as belonging to his Government without identification and proof?
- 3. In the case cited above, if the papers were surrendered, could copies be properly kept?
- 4. Is there any law paramount to the right of diplomatic immunity?

Taking up these questions seriatim, we remark that from the moment that von Igel was certified to as a member of the German Embassy staff, his immunities became operative and his papers became inviolable. All this is a question of record. The object of this immunity is to add to his serviceability, not to screen him from the consequences of illegal acts. It is inconceiveable that a man should be taken into the service

of an embassy in order to screen him. Prior offences must have been unknown to the head of the embassy, else he would not have been appointed. Otherwise scandal results. The reputation of an embassy demands that its members observe the law. The presumption, therefore, seems to me strong, not only that prior offences are not wiped out by reason of a subsequent diplomatic character, but also that the embassy to which such an offender is attached must desire to purge itself, and must insist upon their trial, if necessary, their punishment.

But with papers it may be different. They may truly relate to the work of the embassy and be in no wise charged with their custodian's earlier doings. It is therefore just to allow the embassy head to say what their character is. To take copies of them negatives their inviolability.

Moreover, and here we come to our second query, no one else can determine their character. No one else is in a position to know it. You have got to trust your resident minister altogether, or not at all and have him recalled. If he is plotting against you, there is your right of self-defense, of course, but espionage or knowledge of his secrets by judicial process should not be necessary to self-defense; they are not consistent with real immunity. Nor is it immunity to surrender papers of which copies are kept. It is not the substance of the papers, but the knowledge derived from them which counts. Real immunity demands that you shall not know what they import. In default of actual precedents, then, I should incline to think in the case in point that von Igel could properly be arrested and tried for offences charged to have been committed before his diplomatic character attached; that if von Bernstorff claimed von Igel's papers as embassy documents, they ought to have been held inviolable and that no copies of them should be retained.

The right of a state to defend itself has been alluded to. Here we have precedents; here we are on firmer ground. If any member of an embassy, resident in a state, plots against it, attempts to injure its integrity, its neutrality, its vital interests, its rights are superior to his rights, and he may be arrested and sent out of the country. Even then, however, he is not under the jurisdiction of his place of residence. The right of self-defense in the state exists for protection, not for punishment; that is left to his own government.

T. S. WOOLSEY.

SOME ADUMBRATIONS AS TO EUROPEAN PEACE

It may be worth while collating in chronological order some of the many utterances, mainly from official sources, which canvass the possible termination of the European War. They are not as yet very coherent or consistent. They show no agreement as to the terms of peace or the persons who would be acceptable as arbitrators. They do show, it is submitted, that the Powers involved are seriously considering the termination of the great conflict and that there are tentative endeavors to ascertain both domestic and foreign sentiment on this subject. Each shrinks from expressions which may encourage his enemy or dishearten his friends. Each fears that any concession may be regarded as indicating exhaustion, and as a display of the white flag. The situation is exactly such as may be helped by the good offices of a neutral government which has no ulterior purposes to serve except the general good.

The almost daily suggestions, emanating from many sources, as to the willingness and ability of the Holy Father to seek to adjust the relations of the warring Powers do not afford substantial hope. It must be recalled that Great Britain is distinctly a Protestant Power. Russia is dominated by the Greek Church. Germany is controlled by Prussia, a Protestant kingdom, ruled by the Hohenzollerns, a Protestant dynasty; France and Italy are in a state of direct conflict with the Papacy. Turkey and Japan cannot be described as in religious or moral agreement with His Holiness, and Austria, alone of the larger Powers involved, has anything like close or friendly relations with the Holy See. These suggestions of pontifical intervention or mediation may therefore be disregarded as barren and unfruitful.

APRIL 10. Sir Edward Grey declared to a reporter "Peace counsels that are purely abstract and make no attempt to discriminate between the rights and wrongs of this war are ineffective if not irrelevant."

MAY 5. The German Chancellor, Herr Von Jagow, in his note to our Ambassador at Berlin as to the use of submarines against merchant ships, among other things, said,

The German Government, conscious of Germany's strength, twice within the last few months announced before the world its readiness to make peace on a basis safeguarding Germany's vital interests, thus indicating that it is not Germany's fault if peace is still withheld from the nations of Europe. MAY 11. Mr. Lansing published a somewhat guarded denial as to peace conferences with the British Ambassador or Mr. J. P. Morgan or communications as to peace from the Pope.

MAY 14. President Poincaré, in an address at Nancy, having reference to the declarations of Germany in her reply to the American note, said,

France does not want Germany to tender peace, but wants her adversary to ask for peace. * * *

We do not submit to their conditions, we want to impose ours on them. We do not want a peace which would leave imperial Germany with the power to recommence the war and keep Europe eternally menaced. We want peace which receives from restored rights serious gurantees of equilibrium and stability. So long as that peace is not assured to us, so long as our enemies will not recognize themselves as vanquished, we will not cease to fight.

The French press has widely characterized this statement as the final and authoritative announcement of the policy of France.

MAY 16. The New York *Herald* published the following as an official dispatch received by the British Embassy in Washington:

Rumors of an early peace rest only in Germany. It is the last gasp of the German peace propaganda. There is no intention either of England or any one of her Allies to be deterred or turned aside from tasks they have undertaken.

The New York Sun of May 19th, describes a riotous discussion in the Reichstag, where Deputy Haase, socialist, declared amid cries of "Throw him out": "One thing I will tell you; those are the best patriots who, after twenty months of war, champion the concentration of the peoples and the conclusion of the war" and amid violence and confusion President Kaempf adjourned the session.

MAY 22. Premier Briand, addressing visiting Russian officials in Paris, said, "Peace would come after a decisive victory and would insure against another world war."

This was commented on in the press as an answer to the German propaganda for peace and as stopping efforts for peace by President Wilson.

M. René Viviani, of the French Cabinet, said at Petrograd that the Allies "intended to break Germany's heavy sword."

MAY 25. A resolution was introduced in the United States Senate by Senator Lewis, of Illinois, requesting President Wilson to tender peace overtures to the combatants looking toward arbitration by the neutral nations, with the United States as referee, at the same date President

Wilson expressed his views to others that an offer to mediate would be opportune at the present moment.

MAY 27. President Wilson, in addressing the League to Enforce Peace, as the dispatches put it, "outlined in general terms the basis on which the United States would undertake to suggest or initiate a movement for peace in Europe."

He there said,

that, if it were our privilege to suggest a movement for peace, our people "would wish their government to move along these lines":

First. Such a settlement with regard to their own immediate interests as the belligerents may agree upon. We have nothing material of any kind to ask for ourselves and are quite aware that we are in no sense or degree parties to the present quarrel. Our interest is only in peace and its future guarantees.

Second. A universal association of the nations to maintain the inviolate security of the highway of the seas for the common and unhindered use of all the nations of the world, and to prevent any war begun either contrary to treaty covenants or without warning and full submission of the causes to the opinion of the world, a virtual guarantee of territorial integrity and political independence.

He further said that "public right must henceforth take precedence over the individual interests of particular nations," and he advocated the banding together of all nations to see that such right prevailed, and said that the United States was willing to be partner in such an association.

President Wilson's "peace speech" was warmly commended by the London *Daily News*, which found his arguments almost identical with Sir Edward Grey's recent utterances. It says, "His ideals will be unhesitatingly indorsed by the *Entente Powers*."

M. Clemenceau, however, says in an editorial "The Kaiser's childlike diplomacy has found a complacent listener in President Wilson * * * Mr. Wilson is a candidate for reëlection. His mediation, if Europe accepted it, would be the only title he needs," but that "he publicly proclaimed his offer of intervention. Thus, as any man of common sense would have foretold, his proposition is received with cautious coldness."

"Events will show, cher Monsieur le President! Do not rush your judgment."

May 30. The dispatches of May 30th, from Berlin via The Hague, report conflicting opinions as expressed in the Reichstag. Dr. Stressmann, National Liberal, said,

To be sure there is with us, too, a strong feeling for peace in the army and the nation. But if you were to let the German nation vote on whether it would suffer Wilson, the protector of America's arms and ammunition shipments and of the English hunger war, to act as peace mediator, you would find a vanishing minority. We would not reject peace mediation of a really neutral Power, perhaps that of the President of Switzerland, but the hand of Wilson we reject, and we believe ourselves one with the overwhelming majority of the German people. (Applause from Conservative and National Liberals, protest from Socialists and Liberals.)

Herr Von Grafe said,

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We must bear in mind that England and its transatlantic friend are trying to wage a hunger war against our women and children. We all know our entire population thereby have been more or less subjected to the hardships of this war, but we also know this policy of our enemies can never have a sufficient success among our people, as to hasten by even one day bringing about an unfavorable peace. * * *

In the Chancellor's speeches the enemy press sees a masked retreat and that curious peace angel, Wilson, is thereby encouraged first to knock out Germany, then to extend the hand of peace.

Herr Hirsch, National Liberal said, "Will anyone seriously assert that Wilson wants to do Germany a good service? His answer to the Kaiser's letter alone contradicts that view."

Dr. David, Socialist, said emphatically "that a majority of the German people do not approve of the policy recommended by the Conservatives, that the German people do not want war with America or any other neutral Power."

A radical Socialist said that "the Conservatives feared the quick coming of peace, and were starting scenes to prevent it. Perhaps they believe the peace threads have already been spun and are trying to tear them." He added, "If our people had the freedom to declare peace without annexation we would not have to be talking about it here."

Another Socialist said,

Under no circumstances are Socialists in favor of the continuation of the war for the sake of the more or less insane object of conquest. Annexation of territory is in no way consistent with the true interest of the people.

MAY 31. The *Tagenblatt's* Munich correspondent reports a successful conference between the German Chancellor and the King of Bavaria and that the King and leading Bavarian personages are throughout in agreement with the lines as to peace laid down by the Imperial Chancellor, and that he repudiates all idea of Germany's intending to keep enemy territory already occupied as a future boundary.

Count Tisza, the Hungarian Premier, at the same time accorded a cautious interview to a correspondent of the *Tagenblatt*, saying "The final event which we could desire to happen before embarking on peace negotiations is occurring, the expulsion of the Italians from Austrian soil." It must be noted that this "event" has been since interrupted.

Count Tisza adds,

that he does not see on what their enemies base their hopes, as their expectations as to Italy, the attitude of Rumania and the United States and upon the Balkan adventure have proved erroneous. Now as before it depends solely upon our enemies when peace is restored.

From the moment when we destroyed the aggressive intention of our adversaries we made no secret of our willingness for peace. Like Bethman-Hollweg and Grey, I, too, desire a peace which will assure to Europe permanent quiet.

The same day Mr. Asquith, in the Commons, said that there was nothing in Bethman-Hollweg's statements that indicated Germany was prepared to consider terms of peace which would safeguard the interests of the *Entente* Allies and the future peace of Europe.

A dispatch of the same day from Rome says that Prince Camporeale, brother-in-law of Prince von Bülow, has confided to friends that the Kaiser solicited President Wilson's mediation and offered to send von Bülow to Washington to coöperate for peace, based on spontaneous concessions, possibly including the evacuation of Belgium.

On the same, May 31st, Mr. Baker, Secretary of War, a known pacificist, now in charge of the military affairs of the United States, said to the "Tom L. Johnson Club" at Cleveland, Ohio, that "before election there will be a triumphant demonstration of the value of the Wilson Administration's moral neutrality." He said further

To-day with every nation looking for peace, the United States is looked to as the arbitrator of peace, the friend of all the contestants. * * * Not to the head of any other neutral nation are these nations looking; they are looking to President Wilson, and when the war is over they will be ready to sit down with him at the head of the table.

JUNE 6. The debates in the Reichstag on peace were continued and the unsatisfactory answers of England and France "to the Chancellor's offer of peace" were said to necessitate the continuance of the German defence.

The spokesman for the Conservatives declared Mr. Wilson's mediation insufferable. The spokesman of the Socialists said

The longing for peace is growing among all peoples and therefore one ought not to reject the services of an honorable peace broker. President Wilson's peace speech was greeted with wild protests by the English and a part of our press, but the German people will surely thank an honest non-partisan statesman for his mediation. The German Government must still more than heretofore, strive with every means in its power to give the nations the eagerly desired peace again.

The National Liberal leader thought the main thing, in connection with required security

is the extension of Germany's position on the mainland coast. A great colonial empire which we too strive for, is of minor importance. We will wait and see how much success President Wilson will meet in bringing about a feeling of readiness for peace on the part of our enemies, which, after all, must form the basis of negotiations.

The Chancellor declared the futility of peace talk on the part of Germany since his repeated intimations of readiness for peace had only drawn scorn from the enemy.

Statements attributed to Ambassador Gerard as to President Wilson's proposed peace mediation were promptly denied by Mr. Gerard and therefore require no further mention, and on June 5th the Chancellor announced that he had received no *official* intimation that the President intended to offer mediation.

Mr. Lloyd George is quoted in a dispatch of June 8th, as saying "Only a crushing military victory will bring the peace for which the allies are fighting."

The great North Sea naval battle of May 31st and June 1st, though attended with heavy loss on both sides, yet gave to each such satisfaction that it seemed to much diminish the demand for peace and the Chancellor's utterances were shaped accordingly.

The general committee of the Conservative Party unanimously approved the attitude of its party leaders as to peace and a prejudice against any further peace talk is reported in high official circles of Germany.

Lord Cromer in the *Times* and the *Spectator* in two leading articles strongly opposed the suggestions of President Wilson as to peace, the latter recalling, very irrelevantly, the unwillingness of the United States to permit foreign mediation in our great Civil War, a case quite different from an international war.

The Local Anzeiger speaks favorably, Count von Reventlow most hostilely of mediation by President Wilson, and Professor Delbrück, of the University of Berlin, finds something repellant to Germany in accepting President Wilson as a mediator, his sympathies being, as he thinks, wholly with the *Entente* Powers.

The detached situation of the United States and the composite character of its population, which directs the attention of its public men to very divergent sympathies, certainly equip it especially as an intermediary. Holland and Switzerland which have been suggested, seem too small for adequate weight and too near for adequate independence, in view of the heat and violence of the contest.

This writer is confident that the desire to compel an untimely peace or to dominate its terms is not justly attributed to Mr. Wilson. He would heartily join with the standing committee of the American Bar Association in its report for 1915–16, just filed, in the hope that, freed from any such implication, the good offices of the Government of the United States "may always be open to the nations unhappily involved" for the establishment of the firm and lasting peace "so ardently desired by mankind."

CHARLES NOBLE GREGORY.

CONCERNING PRISONERS OF WAR

The treatment accorded enemy persons, who being unable to resist, have been captured on the field of battle or elsewhere, has undergone slow and definite transformation since earliest recorded times. Widespread consciousness that a prisoner of war is a public rather than a private foe, and one not necessarily chargeable with reprehensible conduct, has served to mitigate the fate that once surely awaited children and women as well as men who fell into the clutches of an enemy. It may be unnecessary to trace the development toward better things.

The Hague Regulations of 1907, adverting to the fact that prisoners of war are in the power of the hostile government rather than of the individuals or corps who capture them, declare that prisoners must be "humanely treated." To that end it is provided that all of their personal belongings, except arms, horses and military papers, shall remain their property.

Events of the European War indicate that from the moment of capture until placed in an internment camp, rather than at any subsequent period of captivity, a prisoner is likely to be subjected to brutal treatment. His helplessness is oftentimes utilized by his captors, to subject him to personal violence or even to deny him quarter, or torture him with abuse. In the course of transporting the prisoner to a place of internment there still survives a tendency to endeavor to render him by any process despicable in the eyes of the civil population. In order to remedy the evil there is required further international agreement not merely expressing denunciation of inhumane conduct, but rather making appropriate provision which, if observed, shall serve in fact to assure a form of protection that does not exist today.

The reasonableness of the utilization by the captor of the labor of prisoners of war (other than officers) must be proportional to its obligation to maintain them. The regulations impose the duty of maintenance upon the captor, declaring that in the absence of special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging and clothing on the same footing as troops of the government who captured them. The Hague Regulations of 1907 (like the Oxford Rules), fail to take cognizance of the fact that the habitual diets of opposing armies frequently differ as radically as the races or nationalities to which they respectively belong, and that, under such circumstances, for a captor to feed its prisoners on the same scale or according to the same form of diet as is applied to its own troops, may cause great hardship and physical injury to those held in captivity. The health, discipline, and general welfare of prisoners of war depends upon the ability and disposition of the captor to give them food not unlike that to which they have been accustomed. Thus, apart from the matter of expense or quantity of the rations issued, it is of highest importance, when possible, to afford the prisoner the same kind of diet as that on which he has previously been maintained. This might be accomplished in part by permitting prisoners to administer their own commissary department, and by having all food cooked and prepared by prisoners of the same nationality or state as that of those by whom it is to be eaten. Appropriate international agreement, requiring under reasonable conditions observance of such a practice is believed to be desirable.

It is provided that wages earned by prisoners for public or other service rendered "shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance." It is believed that the wisdom of imposing upon the captor the duty of maintenance may be doubted. A state so burdened will, in proportion to the magnitude of its obligation, be inclined to incur the least possible expenditure, and will seek to accom-

plish that end by the exaction of the maximum of labor and the issuance of cheapest rations, thereby placing upon the prisoner the burden of obtaining by his own excessive labor the plain necessities of life. The departure expressed in the Hague Regulations from the old practice which found expression in Article XXIV of the treaty between the United States and Prussia, of September 10, 1785, placing the burden of maintenance of both officers and men who were taken prisoners on the state to which they belonged, is not believed to have been a step forward.

Assurance of observance of international regulations during long periods of internment requires more than the protestations of the captor state that it is fulfilling its legal obligations. In the course of the present War both Germany and Great Britain acquiesced in a plan permitting the inspection and supervision of relief of prisoners held by each respectively, and that by appropriate American diplomatic and consular officers. In consequence, constant and numerous inspections of prison camps have been made and conditions therein rigidly examined and reported on.

The proven value, if not the necessity, of inspection and relief, through neutral agencies, emphasizes the importance of general international agreement contemplating their use in the event of war, and establishing the right of a belligerent to avail itself thereof. By no other process can inhumane treatment on the part of a captor in any form be so readily detected, or so fairly estimated. From no other source can there emanate criticisms or suggestions better calculated to ameliorate the condition of prisoners, or to abate just causes of complaint.

CHARLES CHENEY HYDE.

PROPOSED AMENDMENTS TO THE NEUTRALITY LAWS OF THE UNITED STATES

In his masterly treatise on international law, the late Mr. W. E. Hall felt himself justified in saying:

The policy of the United States of 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced. In the main however it is identical with the standard of conduct which is now adopted by the community of nations. (Hall's International Law, 4th ed., § 213, p. 616.)

The modern doctrine of neutrality may therefore be considered as the gift of the United States to a war-ridden world.

But the neutrality laws (passed during Washington's administration, revised, with slight additions, in 1818, incorporated in the Revised Statutes in 1878, Sections 5281 to 5291, and reissued, with only verbal changes, in the Penal Code of the United States, Sections 9 to 18) may well be defective from the national if not from the international point of view, because the world in which we are living is in reality a new world and the conditions of warfare are vastly different from what they were in the days of Washington, and indeed from what they were supposed to be by the well informed layman on August 1, 1914.

The United States was apparently the first nation to accept its neutral duties and to state them in the form of a municipal act, prescribing pains and penalties upon persons within its jurisdiction who should violate the neutrality laws. These statutes were no doubt enacted, as stated by Mr. Hall, because President Washington and his advisers believed that the duty of the United States as a neutral was as stated in the statutes. It was a frank recognition of the fact that international law is a part of the law of the land and that the government, as well as its citizens and persons within its jurisdiction, are subject to the law of nations.

But while the law of nations is admitted to form part of our law and to be the measure of our duties as well as of our rights in matters international, and while the United States as such is bound by its provisions, the administration is not in a position to punish acts committed by persons within American jurisdiction, unless the act in question has been made a crime by municipal statute, a penalty affixed to its commission, and a court constituted in which the defendant may be tried. It thus happens that the United States may be liable under international law for an act which it should have prevented, but which, by the absence of municipal statute, it could neither prevent nor punish if committed. There was doubt whether or not the duties incumbent upon the United States and upon its citizens or persons subject to its jurisdiction could be proclaimed by the President and prosecutions instituted in the courts upon the proclamation, or whether a statute was required. The doubt was resolved in favor of a statute in the case of United States v. Hudson, 7 Cranch, 32, decided by the Supreme Court in 1812.

The question was whether there was a common law of crimes in the absence of statute, or in other words, whether the court would take

jurisdiction of an act alleged to be a crime merely because it was such a crime under the common law, or whether the court required an act of Congress in order to assume jurisdiction. The court held, per Mr. Justice Johnson, that:

The legislative authority of the Union must first make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offence.

As the result of this decision, which is neither questioned nor overruled, the United States may well find itself in the embarrassing position that it will be held liable internationally for the commission of an act which, if committed by one of its citizens or persons within its jurisdiction, its courts cannot punish; because, while international law is a part of our law, binding alike upon the government and persons within its jurisdiction, the law of nations, in so far as it penalizes an action and in this respect stands upon the same footing, will not be administered in a criminal offense unless a statute has been passed in accordance with the holding of the Supreme Court in the case of United States v. Hudson.

The law of nations prescribes the duty incumbent upon the United States. An act of Congress, however, is required to make the offense a municipal crime and to penalize its commission. The failure on the part of the United States to enact such legislation does not free it from the consequences, because the law of nations taxes it with the duty, and if it fails to perform the duty it does not and should not escape the consequences.

Shortly after the outbreak of the great war the government was much impressed by the fact that merchant vessels were accused of violating the neutrality laws. It would have been a simple matter to withhold the clearance to the master of the vessel, which he must have in order legally to leave American ports. There was such grave doubt as to whether the duty to give the clearance upon compliance with the statute was not mandatory, even although the collector was convinced of the falsity of the statement, that a Joint Resolution was passed by Congress specifically investing the government with power to withhold clearances to vessels suspected of violating the neutrality laws of the United States. The Joint Resolution dealt also with some other matters, as will be seen from its text, which is here quoted in full:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this resolution, and during

the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than \$2,000 nor more than \$10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States.

Approved, March 4, 1915.

The course of the war has shown the government that more radical legislation is necessary in behalf of its neutrality as well as in defense of its sovereign rights from attack within its proper jurisdiction. As the result of the experience had since the outbreak of the war, the Attorney General of the United States, the Honorable Thomas W. Gregory, has recommended a series of statutes, some eighteen in number, which, if they be made the basis of bills and enacted into law by Congress, will enable the United States more easily to perform its duties as a neutral to the belligerents and will protect it from acts committed within its jurisdiction which, if unpunished, might compromise its neutrality and would seriously disturb the domestic peace of the United States.

The Department of Justice recently issued a pamphlet containing the recommendations of the Attorney General for legislation amending the criminal and other laws of the United States with reference to neutrality and foreign relations. The legislation which the Attorney General recommends is grouped under eighteen headings, and as they are in each case a summary statement of what the statute should contain, they are here quoted in full as the briefest statement of the proposed legislation.

I. An act making it a crime willfully to interfere with or prevent, or to attempt to interfere with or prevent, or to conspire to interfere with or prevent, the exportation to foreign countries of articles from the United States, by injury to or destruction of such articles, or of the buildings or places in which they are stored, produced, or manufactured, or of the instrumentalities of transportation used or intended to be used in the course of such exportation, or by means of any other violence or threat of violence to person or property.

II. An act making it a crime to set fire to any vessel engaged in foreign commerce of the United States, or her cargo, or to tamper with the motive power or instrumentalities of navigation of such vessel, or to place bombs or explosives in or upon such vessel, or to do any other act to such vessel while within the jurisdiction of the United States (or if she is entitled to fly the flag of the United States while she is on the high seas), with intent to injure or endanger the safety of the vessel or of her cargo, or of persons on board, whether the injury or danger is so intended to take place within the jurisdiction of the United States or after the vessel shall have departed therefrom; or to attempt or to conspire to do any such act with such intent.

III (a). An act authorizing the detention by the President of the United States, or by any official duly empowered by him, of any vessel, American or foreign, by withholding clearance, or in the case of American vessels that do not require clearance, by a formal notice forbidding departure, in any case in which he or the official duly empowered by him has reasonable cause to believe that fuel, arms, ammunition, men, supplies, dispatches, or information are to be carried to a warship or to a tender or supply ship of a foreign belligerent nation in violation of the obligations of the United States as a neutral nation; also penalizing the departure or attempted departure of any such vessel without clearance or after receipt of the said formal notice forbidding departure.

III (b). An act authorizing, during a war in which the United States shall be neutral, the detention by the President of the United States, or by any official duly empowered by him, of any armed vessel owned wholly or in part by American citizens, or of any vessel, American or foreign, that has not entered the ports of the United States as a public vessel, and that is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person or persons having charge of such vessel shall furnish proof satisfactory to the President of the United States, or to the official duly empowered by him, that the vessel will not be employed by the said owners, or master, or person or persons having charge thereof, to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, and that the said vessel will not be sold or delivered to any belligerent by them or any of them within the jurisdiction of the United States or, having left that jurisdiction, upon the high seas; this act also to contain provisions making violations a crime.

III (c). An act making it a crime during a war in which the United States is a neutral, for any person to send or attempt or conspire to send or take part in the sending out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation or to an agent, officer, or citizen of such nation, or with

reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation, after its departure from the jurisdiction of the United States.

- IV. (a) An act authorizing the collectors of customs, or other officers duly empowered by the President, at any time during a war between foreign nations or between factions within a foreign country, to inspect any foreign private vessels within the jurisdiction of the United States for the purpose of investigating and detecting any use or attempted use of such vessel in violation of the statutes or treaties of the United States or of its obligations as a neutral nation; also making it a crime to prevent or obstruct such inspection by the collector or by such other officer, or to deceive or attempt to deceive such other officer;
- (b) An act making it a crime to allow vessels in our ports to be used as a place of resort for persons conspiring or preparing the means to commit any violations of the laws of the United States.
- (c) An act providing that during a war in which the United States is a neutral, the master's manifests and the shipper's manifests shall contain statements, in addition to those now required by law, to the following effect: That the cargo or any part of the cargo is or is not to be delivered to other vessels in port or transshipped on the high seas, and if it is to be so delivered or transshipped stating under oath the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped and the name of the person, corporation, or vessel, or government, to whom the delivery or transshipment is to be made; also making similar provisions apply to American vessels which do not require a clearance leaving the ports of the United States; also providing that the collector of customs shall have authority to withhold clearance, or in the case of American vessels not requiring a clearance to forbid them departure by a formal notice if, in his opinion, there is reasonable cause to believe that the master's or shipper's manifest is false; also providing that the provisions of Revised Statute 4200 as to requirement of an oath to manifests be still in force; also making it a crime for any such vessel to depart without clearance or after such formal notice.
- V. (a) An act requiring applications for passports to be under oath, and authorizing the Secretary of State by regulation to require proof by affidavit of such facts as he may deem desirable, and making false statements in any such application or affidavit, perjury;
- (b) An act making criminal the fraudulent obtaining, transfer, or use of passports, and the alteration or forgery of passports issued.
- VI. An act making criminal the fraudulent use, or application, or counterfeiting of the seal of any executive department or government commission.
- VII. An act amplifying the rather restricted provisions of the Radio Act with reference to the powers of the President to censor or prescribe the manner in which wireless messages, and also cablegrams, shall be transmitted to belligerent countries or ships upon the high seas, or otherwise.

VIII. An act amending section 13, Federal Penal Code, so as to read as follows: Whoever within the territory or jurisdiction of the United States begins, or sets on foot, or furnishes money, or provides or prepares the means for, or who takes part in or attempts to take part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince

or state, or of any colony, district, or people with whom the United States are at peace, shall be fined, etc.

IX. An act authorizing the seizure and detention or retention of arms and munitions of war which are being exported, or which the government has reason to believe are about to be exported, in violation of any embargo on export of arms and munitions of war, in pursuance of the joint resolution of March 14, 1912, or of any similar future legislation, or in connection with violations of the law as to military expedition under Penal Code, section 13:

X. An act making it a crime for any person belonging to the armed land or naval forces of a belligerent nation, who is or shall be interned within the jurisdiction of the United States, to leave or attempt to leave said jurisdiction or to leave or attempt to leave the limits within which freedom of movement is allowed, unless authority therefor has been granted by the proper official of the United States Government, or to overstay leave of absence granted, under penalty of arrest and return to the place of internment and close confinement for a period of time within the discretion of the Government of the United States; and also making it a crime for any person within the jurisdiction of the United States and subject thereto to aid or entice any interned person so to escape or attempt to escape.

XI. An act making it a crime to swear falsely in any affidavit which the affiant has knowledge or reason to believe will or may be used to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any dispute or controversy with the United States or to defeat any measure of the Government of the United States in relation to such dispute or controversy.

XII. An act making it a crime to obtain, without lawful authority, or to communicate to a foreign government or any officer or agent thereof, or to any other person, any facts or information relative to the national defense obtained by virtue of employment in the service of the United States, or obtained from unlawful access to government papers or other property, or by fraud upon or connivance with a Government official or employee, or otherwise unlawfully obtained or retained.

XIII. An act making it a crime to mint or print or otherwise manufacture in the United States for any faction or body of insurgents within a country with which the United States is at peace, such faction or body of insurgents not being recognized by the United States as a government, any gold or silver or other coins or paper money intended to be issued and used as currency or any securities to be issued by such faction or body of insurgents in such other country; and further making it a crime to counterfeit within the United States any gold or silver or other coins or paper money intended to be used as currency or securities issued for or by such faction or body of insurgents.

XIV. An act making it a crime for two or more persons to conspire in the United States to injure or destroy within any foreign country the property of a foreign country with which the United States is at peace, or of any subdivision or municipality thereof, when such injury or destruction is an offense under the laws of such foreign country of the grade of felony or infamous crime, and when one or more of such parties to such conspiracy do in the United States any act to effect the object of the conspiracy.

XV. An act making it a crime within the jurisdiction of the United States falsely to assume or pretend to be a diplomatic or consular or other official of a foreign

Government duly accredited to the Government of the United States, with intent to defraud such foreign government or any person, and to take upon himself to act as such, or in such pretended character to demand or obtain from any person or from such foreign government or any officer thereof any money, paper, document, or other valuable thing.

XVI. An act to prevent aliens other than diplomatic or consular officers or attachés from acting in the United States as the agent of a foreign government without prior notification to and consent of the Government of the United States.

XVII. An act providing that it shall be lawful for the President of the United States to employ the land and naval forces thereof to detain any vessel, public or private, foreign or domestic, in compliance with, or in order to prevent the violation of, the international obligations of the United States relating to neutrality, or to enforce any or all other obligations imposed upon the United States by the law of nations, by treaties or conventions to which the United States is a party, or by the statutes of the United States.

XVIII. An act authorizing the issue of search warrants in the enforcement of criminal laws relating to foreign relations and the observance of neutral obligations, and of other criminal law.

In submitting the recommendations to the Foreign Relations Committee of the Senate and the Foreign Affairs Committee of the House, and to the Judicial Committee of each body, the Attorney General states the reasons which have caused him, acting on behalf of the United States, to request legislation of this kind and at this time from the Congress. Thus, he says:

The following recommendations for new legislation are made as a result of the experience of the Department of Justice and of the State Department during the past three years in the administration of law in connection with the relations of this country with Mexico and with the problems arising out of the European war.

Many acts committed in the United States in serious violation of its sovereignty and against its peace and the safety of its citizens are not now punishable by any Federal criminal law; others are punishable only under unsatisfactory statutes passed in relation to conditions altogether different from those now prevailing.

The present laws relating to neutrality are clearly defective. In some cases, no statutory provision whatever is made for the observance of obligations imperatively imposed by international law upon the United States; in other cases, inadequate provision is made.

In my opinion, the passage of the new legislation herewith submitted is required for the protection of the United States and its citizens and for the fulfillment of the duty owed by the United States to other nations with which it is at peace.

The general recommendations set forth in this memorandum have been submitted to the State Department and have been concurred in by the Secretary of State and by the Joint State and Navy Neutrality Board.

James Brown Scott.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: Ann. sc. pol., Annales des sciences politiques, Paris; Vie Int., La Vie Internationale, Brussels; Arch. dipl., Archives Diplomatiques, Paris; B., boletin, bulletin, bolletino; P. A. U., bulletin of the Pan-American Union, Washington; Clunet, J. de Dr. Int. Privé, Paris; Doc. dipl., France, Documents diplomatiques; B. Rel. Ext., Boletin de Relaciones Exteriores; Dr., droit, diritto, derecho; D. O., Diario Oficial; For. rel., Foreign Relations of the United States; Ga., gazette, gaceta, gazzetta; Cd., Great Britain, Parliamentary Papers; Int., international, internacional, internazionale; J., journal; J. O., Journal Officiel, Paris; L., Law; L'Int. Sc., L'Internationalism Scientifique, The Hague; M., Magazine; Mém. dipl., Memorial diplomatique, Paris; Monti., Moniteur belge, Brussels; Martens, Nouveau recueil générale de traités, Leipzig; Q. dip., Questions diplomatiques et coloniales; R., review, revista, revue, rivista; Reichs G., Reichs-Gesetzblatt, Berlin; Staats., Staatsblad, Netherlands; State Papers, British and Foreign State Papers, London; Stat. at L., United States Statutes at Large; Times, The Times (London).

May, 1914.

- 8 Brazil—Uruguay. Decree of Uruguay approving treaty relative to frontier, signed May 7, 1913. Text: B. del rel. ext. (Uruguay), 2:26, 461.
- 23 ITALY—URUGUAY. Decree of Uruguay proclaiming treaty with Italy relative to the claims of the ship Maria Madre. B. del min. de rel. ext. (Uruguay), 2:26, 184

August, 1914.

- 13 Colombia. Regulations issued relative to provisioning, arming, etc., of war ships and merchant ships of belligerents in Colombian ports. Informe del ministerio de rel. ext. al Congresso de 1915, p. 169.
- 14 CHILE. Proclamation stating rules to be observed by ships of belligerents in Chilean waters. R. gén. de dr. int. public, 23:doc.:7.
- CHILE—Great Britain. Note sent by Great Britain, in response to Chilean note of August 7, relative to the purchase of Germanowned ships by Chile. R. gén. de dr. int. public, 23:doc.:8.

August, 1914.

- 22 Colombia. Additional regulations concerning ships of belligerents in Colombian waters particularly relating to wireless telegraph operations. *Informe del min. de rel. ext. al Congreso de 1915*, p. 171.
- 31 URUGUAY. Declaration of neutrality in European war. Uruguay. B. del min. de rel. ext., 2:748.

September, 1914.

- 1 Colombia. Regulations issued for the use of the wireless telegraph.

 Informe del min. de rel. ext. al Congreso de 1915, p. 172.
- 11 Colombia. Further regulations for the use of wireless telegraph. Informe del min. de rel. ext. al Congreso de 1915, p. 173.
- 13 CHILE—GREAT BRITAIN. Note from Great Britain, with further conditions relative to the purchase by Chile of German-owned ships. R. gén. de dr. int. public, 23:doc.:9.
- 25 CHILE—Great Britain. Response of Chile to British note of Sept. 21, relative to the purchase by Chile of German-owned ships. R. gén. de dr. int. public, 23:doc.:9.
- 29 URUGUAY. Decree additional to the decree of August 31, 1914, relative to the neutrality of Uruguay. B. del. min. de rel. ext. 2:833.

October, 1914.

- 14 CHILE. Regulations issued relating to the coaling of belligerent ships in Chilean ports. R. gén. de dr. int. public, 23:doc.:10.
- 14 CHILE. Regulations issued relating to the use of wireless telegraph by ships in Chilean waters. R. gén. de dr. int. public, 23:doc.:10.

November, 1914.

- 2 CHILE. Regulations issued relating to the provisioning, coaling, etc., of war ships and merchant ships of belligerents. R. gén. de dr. int. public, 23:doc.:10.
- 5 CHILE. Decree relating to neutrality of Chile and to the use of territorial waters. R. gén. de dr. int. public, 23:doc.:11.
- 7 Chile. Circular sent to navigation companies, etc., indicating measures taken by Chile to prevent abuse of privileges granted belligerent ships for coaling, etc. R. gén. de dr. int. public, 23:doc.: 11.
- 13 CHILE. Circular issued relating to ordinary telegraphic communications. R. gén. de dr. int. public, 23:doc.:11.

November, 1914.

27 Colombia. Regulations issued for the press on the subject of Colombian neutrality. *Informe del min. de rel. ext. al Congreso de 1915*, p. 119.

December, 1914.

- 5 Colombia. Decree closing the wireless telegraph station at Cartegena during the European War. Informe del min. de rel. ext. al Congreso de 1915, p. 116.
- 12 CHILE—GERMANY. Note from Chile to Germany protesting against violation of Chilean neutrality by the German Cruiser Eitel Freiderich. Text: R. gén. de dr. int. public, 23:doc.:12.
- 12 CHILE—GERMANY. Note from Chile to Germany protesting against the violation of Chilean neutrality by the German fleet at the Ile de Paques. Text: R. gén. de dr. int. public, 23:doc.:12.
- 13 CHILE—GERMANY. Note from Chile to Germany protesting against the violation of Chilean neutrality by the German fleet at the Island of Juan Fernandez. R. gén. de dr. int. public, 23:doc.:12.
- 15 Chile. Decree relative to territorial waters in Southern Chile and particularly in the Strait of Magellan. This decree was made with the knowledge of Argentine Republic. Under date of Dec. 30, 1914, Chile informed that country that "by this act the government did not attempt to modify the situation created by the treaties of Chile with Argentine Republic relative to the Strait of Magellan and the canals of the South." R. gén. de dr. int. public, 23:doc.:12.
- 15 CHILE. Decree relative to the furnishing of coal to war ships and merchant ships of belligerents. R. gén. de dr. int. public, 23: doc.:13.
- 17 CHILE. Further instructions relative to the coaling of belligerent ships in Chilean ports. R. gén. de dr. int. public, 23:doc.:15.
- 30 Chile. Decree relative to the use of the telegraph, wireless telegraph and telephone. R. gén. de dr. int. public, 23:doc.:15.

January, 1915.

- 4 CHILE. Further instructions relative to the coaling of belligerent ships in Chilean ports and waters. R. gén. de dr. int. public, 23: doc.:15.
- 12 CHILE. Instructions to the ministries of war and marine concern-

January, 1915.

- ing claims relative to the violation of Chilean neutrality. R. gén. de dr. int. public, 23:doc.:16.
- 23 CHILE. Further instructions relative to the coaling of belligerent ships in Chilean ports and waters. R. gén. de dr. int. public, 23: doc.:16.
- 25 CHILE. Decree modifying rules relative to telegraphs, wireless telegraphs and telephones, dated December 30, 1914. R. gén. de dr. int. public, 23:doc.:16.

February, 1915.

10 Great Britain—United States. Great Britain informed the United States that the doctrine of continuous voyages did not apply to conditional contraband, except to goods consigned to order of unknown consignor or to consignee within enemy territory. N. Y. Times, April 5, 1916.

March, 1915.

- 13 Chile. Note from the ministry of foreign affairs to the ministries of war and marine relative to rules governing the coaling of merchant ships of belligerents, dated December 15, 1914. R. gén. de dr. int. public, 23:doc.:17.
- 26 CHILE—GREAT BRITAIN. Note from Chile to Great Britain protesting against the violation of Chilean neutrality by the British fleet at the Island of Juan Fernandez. [Dresden incident.] Great Britain. Cd. 7859; R. gén. de dr. int. public, 23:doc.:19.
- 26 CHILE—GERMANY. Note from Chile to Germany protesting against the violation of Chilean neutrality by the German fleet at the Island of Juan Fernandez. [Dresden incident.] Great Britain. Cd. 7859; R. gén. de dr. int. public, 23:doc.:18.

March. 1915.

- 30 Chile. Decree regulating official communications of diplomatic agents and foreign consuls with the government of Chile. R. gén. de dr. int. public, 23:doc.:21.
- 30 CHILE—GREAT BRITAIN. Reply of Great Britain to the protest of Chile against the violation of Chilean neutrality at Juan Fernandez, dated March 26, 1915. [Dresden incident.] Great Britain. Cd. 7859; R. gén. de dr. int. public, 23:doc.:20.

March, 1915.

31 CHILE. Note from ministry of foreign affairs to the diplomatic representatives accredited to Chile, on the subject of the conversion of merchant ships into war vessels in Chilean ports and waters. R. gén. de dr. int. public, 23:doc.:17.

April, 1915.

19 Luxemburg. Communication from Luxembourg stating the attitude of that government in relation to the invasion of Luxembourg by Germany. R. gén. de dr. int. public, 23:doc.:5.

May, 1915.

- 15 CHILE. Decree relative to the coaling of merchant ships of belligerents in Chilean ports and waters, amending the decree of December 15, 1914. R. gén. de dr. int. public, \$3:doc.:21.
- 19 CHILE—GERMANY. Note from Chile to Germany relative to the violation of Chilean neutrality by the German fleet at Juan Fernandez. [Dresden incident.] R. gén. de dr. int. public, 23: doc.:22.

June, 1915.

- 18 CHILE—Great Britain. Note from Great Britain to Chile asking the admission into Chilean ports of merchant vessels armed for defense only. R. gén. de dr. int. public, 23 doc.:22.
- 23 CHILE—GERMANY. Response of Germany to the Chilean note of May 19 relative to the violation of Chilean neutrality by the German fleet at Juan Fernandez [Dresden incident]. R. gén. de dr. int. public, 23:doc.:22.

July, 1915.

- 7 CHILE—Great Britain. Note from Chile to Great Britain in response to British note of June 18 asking admission to Chilean ports of British merchant vessels armed for defense only. R. gén. de dr. int. public, 23:doc.:24.
- 14 Colombia. Additional regulations issued relative to the use of wireless telegraph. *Informe del min. de rel. ext. al Congreso de 1915*, p. 188.
- 16 CHILE—GERMANY. Response of Germany to the Chilean protest against the violation of Chiean neutrality by the German cruiser

July, 1915.

Eitel Freiderich in Papudo, dated March 31, 1915. R. gén. de dr. int. public, 23:doc.:25.

August, 1915.

- 6 CHILE—GERMANY. Note from Chile to Germany in response to the German note of July 16 relative to the violation of the neutrality of Chile by the German cruiser *Eitel Freiderich*. R. gén. de dr. int. public, 23:doc.:25.
- 27 France. Declaration of the blockade of the coasts of Asia Minor and Syria. J. O. Aug. 27, 1915:6005.

October, 1915.

22 Peru. Peru ratified the treaties adopted by the Bolivian Congress.

B. del. min. de rel. ext. 8:938.

December, 1915.

31 Paraguay—Uruguay. Ratifications exchanged of treaty to promote peace signed February 27, 1915. Spanish Text: B. del min. de rel. ext. (Uruguay):4:5.

January, 1916.

8 Cameroons. Blockade raised so far as concerns the coast line from the Akwayafe River to Bimbia Creek. The blockade remains in force from the Begge mouth of the Sanaga River to Campo. London Gazette, No. 447.

February, 1916.

- 12 Germany—Italy. Italy, by royal proclamation, broke off trade relations with Germany. N. Y. Times, Feb. 13, 1916.
- 29 Cameroons. Blockade completely raised as from midnight. London Gazette, No. 29492.
- 29 GERMANY—ITALY. Italy requisitioned German vessels interned in Italian ports. N. Y. Times, March 1, 1916; London Gazette, May 12, June 30, 1916.

March, 1916.

- 1 European War. Austro-German classification of armed enemy merchantmen as warships became effective. N. Y. Times, March 2, 1916.
- 2 GERMANY—UNITED STATES. The United States transmitted note

March, 1916.

- to the German Ambassador relative to the status of The Appam. Text issued by the Department of State.
- 19 France—Italy. Declaration signed relative to Morocco. Italian text: R. di diritto int., Vol. 5, ser. 2:118.
- 25 United States. Memorandum issued on the status of armed merchant vessels. Text issued by the Department of State. N. Y. Times, April 27, 1916.
- 26 Costa Rica—Nicaragua. Costa Rica entered suit in the Central American Court against Nicaragua alleging an infringement of Costa Rican rights in the negotiation of the canal treaty with the United States. On May 5 the Central American Court took jurisdiction of the case and called upon Nicaragua to answer. Washington Post, March 27; Washington Star, May 6, 1916.
- 27 EUROPEAN WAR. THE PERSIA. Turkey denied that the *Persia* was sunk by a Turkish submarine. Germany and Austria previously denied responsibility. *R. of R. 53*:542.
- 30 EUROPEAN WAR. Franco-Russian hospital ship *Portugal* sunk by submarine in Black Sea. On April 16 Turkey admitted the sinking, but maintained that the vessel was without mark and was used as a transport for troops. Text of Russian commission of Inquiry: N. Y. Times, May 26, 1916.
- 30 European War. Petrolite. Austria sent reply to note of the United States relative to the Petrolite sunk Dec. 4, 1915. N. Y. Times Current Hist. 4:206.

April, 1916.

- 3 UNITED STATES—FRANCE—GREAT BRITAIN. France and Great Britain sent seply to the protest of the United States against the seizure of the mails. Text issued by the Department of State, N. Y. Times, April 4, 1916.
- 3-12 International High Commission. Met in Buenos Aires, Argentina. This Journal, p. 569.
- 4 European War. The *Portugal*. Russia sent notes to neutral nations protesting against the torpedoing of the Russian hospital ship *Portugal* and requested the American and Spanish Governments to bring the note to the attention of the Central Powers. N. Y. Times, April 4, 1916.
- 7 GERMANY—ROUMANIA. Treaty concluded in which both govern-

April, 1916.

- ments declare their readiness to allow so far as their own needs permit, free transportation of home products, with the exception of war material. N. Y. Times, April 12, 1916.
- 10 Germany—United States. Sussex. Germany replied to the American notes of March 29, 30, and April 3, relative to the Sussex, Manchester Engineer, Englishman, Berwindale and Eagle Point. On May 10, Germany acknowledged that a German submarine had sunk the Sussex. Texts of all notes issued by the Department of State, May 15, 1916.
- 11 NICARAGUA—UNITED STATES. The Nicaraguan Congress ratified the treaty granting the United States naval bases and a perpetual option on the canal route. R. of R. 53:547. Text: N. Y. Times, Feb. 19, 1916.
- 11 EUROPEAN WAR. The Allies landed troops on Cephalonia, the largest of the Greek Islands in the Ionian Sea, for the purpose of creating a naval base at Argostoli. R. of R. 53:544.
- 12 Great Britain. Order in Council issued making additions and amendments to the contraband lists of October 14, 1915, and January 27, 1916. London Gazette No. 29545, 29547.
- 12 Mexico—United States. General Carranza, head of the de facto government of Mexico, sent note to the United States demanding the recall of the United States troops in Mexico. Text issued by the Department of State.
- 12 Mexico—United States. United States forces attacked at Parral, Mexico. N. Y. Times, April 13, 1916.
- 12 European War. Great Britain. Sir Edward Grey announced that bonds, securities, etc., seized, would be dealt with by the Prize Court. N. Y. Times, April 13, 1916.
- 13 European War. France. Changes in contraband list announced. J. O., April 13, 1916.
- 16 European War. The *Portugal*. Turkey admitted the sinking of the *Portugal* on March 30, but maintains that the ship was without Red Cross mark and was being used as a transport for troops. N. Y. Times, May 26, 1916.
- 17 Austria—United States. The United States sent a protest to Austria regarding the sinking of the Russian bark *Imperator* off the Spanish coast; Austria sent a reply May 3. Text issued by the Department of State.

April, 1916.

- 18 Germany—United States. The United States sent note to Germany reviewing submarine operations and American protests since the beginning of the war, with the warning that unless proper assurances be given by Germany that the rules of international law will be observed, diplomatic relations would be broken off. Text issued by the Department of State.
- 20 European War. Portugal. Portuguese regulations issued relating to the release of allied and neutral cargoes on German vessels seized by Portugal. London Gazette No. 29600.
- 21 EUROPEAN WAR. IRELAND. Sir Roger Casement and 2 Irish confederates, with 22 Germans, were captured attempting to land arms in Ireland from a German ship. N. Y. Times, April 22, 1916.
- 21 United States—Holland. The United States suspended the parcel post convention with Holland. Washington Star, April 21, 1916.
- 24 Great Britain—United States. Great Britain sent note in answer to the American note of Nov. 5, 1915, on restrictions on trade. Text issued by the Department of State.
- 30 EUROPEAN WAR. IRELAND. Proclamation issued by Irish insurgents proclaiming the Irish Republic. Text: N. Y. Times, May 1, 1916.

May, 1916.

- 2 Brazil—Germany. Brazilian ship Rio Blanco sunk off Blyth, England. N. Y. Times, May 10, 1916.
- 3 Haiti—United States. Ratifications exchanged of the treaty relating to finances, economic development and tranquillity of Haiti. French and English texts: U. S. Treaty Series No. 623.
- 4 Germany—United States. Germany sent note to the United States calling attention to the fact that in January, 1916, a German submarine signalled the Dutch steamer Bandoeng to stop. Instead of immediately complying the steamer turned toward the submarine at high speed. On the assumption that the steamer was an English steamer in disguise the submarine opened fire. The steamer then stopped and sent a boat for examination of the ship's papers. Germany suggests that neutral governments issue orders

May, 1916.

- to commanders not to turn their ships toward submarines when stopped. Text issued by the Department of State.
- 5 Germany—United States. Germany replied to the American note of April 20, 1916, relative to submarine war. Text issued by the Department of State.
- 5 European War. Great Britain. Announcement made of three prospective changes in blockade rules. 1. New plans for examination of neutral mails; 2. Statement that early orders in Council would be abandoned; 3. Decision of Great Britain to release Germans and Austrians taken from American steamer China. N. Y. Times, May 6, 1916.
- 5 Mexico—United States. Mexican bandits raided Glenn Springs, New Mexico. N. Y. Times, May 6, 1916.
- 6 Costa Rica—Nicaragua. The Central American Court of Justice assumed jurisdiction in the case of Costa Rica against Nicaragua in re the infringement of Costa Rican rights in the negotiations of Nicaragua with the United States relative to the proposed canal treaty. Washington Star, May 6, 1916.
- 8 Germany—United States. The United States answered the German note of May 4, relative to submarine war. Text issued by the Department of State.
- 10 Germany—United States. Germany in note to the United States acknowledged that a German submarine had sunk the Sussex. Text issued by the Department of State.
- 12 Germany—Turkey. Statement made in the Reichstag by Under-Secretary for Foreign Affairs Alfred Zimmermann that at the beginning of the war a defensive alliance was concluded between Germany and Turkey based upon terms of equality and framed to endure for a long period. In addition there were negotiations between the two countries regarding consular representation, legal status of citizens and residential rights. N. Y. Times, May 13, 1916.
- 16 Austria-Hungary—Roumania. Announced that a treaty similar to the German-Roumanian treaty had been signed. R. of R. June, p. 671.
- 16 EUROPEAN WAR. AUSTRIA. Austria sent notes of protest to representatives of allied and neutral states at the Austrian court against the torpedoing of the Austrian hospi-

May, 1916.

- tal ship *Electra*, the attack on the *Daniel Erno*, the steamer *Zagren* and the *Duvrovnik*. Text: N. Y. Times, May 17, 1916.
- 22 Mexico—United States. General Carranza, head of the de facto government of Mexico, sent a note demanding the withdrawal of American troops from Mexico. Text: N. Y. Times, June 1, 1916. Answer sent by the United States June 20, 1916. Text issued by the Department of State.
- 24 Great Britain—United States. The United States replied to the British note of April 3, relative to the right of belligerents to detain and examine parcel and letter mail. Text issued by the Department of State.
- 27 Greek—Bulgaria. Bulgarian troops occupied Fort Ruple, Greek commander being given two hours to evacuate the fort. N. Y. Times, May 28, 1916.

June, 1916.

- 6 China. Death of Yuan Shi Kai, President of China. N. Y. Times, June 7, 1916.
- 8 Germany—Italy. The Imperial Court of Appeal at Leipsig, Germany, rendered a decision in which it stated that Germany is actually, if not formally, at war with Italy. N. Y. Times, June 8, 1916.
- 14-17 EUROPEAN WAR. Economic Conference held by the Allies in Paris. Text of recommendations. Cd. 8271; London Times (Weekly), June 30, 1916.
- 15 Mexico—United States. Mexicans raided San Ignacio, Texas, 100 miles southeast of Laredo, Texas. N. Y. Times, June 15, 1916.
- 16 Mexico—United States. General Trevino, of the Carranza army, sent a note to General Pershing of the American army, informing him that any movement of the American troops south, east or west would be considered an overt act by Mexico and the signal for the opening of hostilities. N. Y. Times, June 17, 1916.
- 18 UNITED STATES. President Wilson called into service the militia of all the States. N. Y. Times, June 19, 1916.
- 18 Mexico-United States. A boat from the American gunboat

June, 1916.

- Annapolis, landing at Mazatlan, Mexico, for the purpose of taking away any Americans who desired to leave, was fired upon and two members of the crew seized. Several persons wounded on each side. The men seized were later released. Text of report of the commander of the Annapolis: N. Y. Times, June 23, 1916.
- 19 Mexico—United States. The governments of the Mexican States of Sinaloa and Yucatan reported to have declared war upon the United States. N. Y. Times, June 20, 1916.
- 20 Mexico—United States. The United States sent a note to Mexico in reply to the Mexican note of May 22, 1916, relative to the withdrawal of American troops from Mexico. Text issued by the Department of State.
- 21 Austria—United States. The United States sent a note to Austria-Hungary relative to the sinking of the steamer *Petrolite*. Text: N. Y. Times, June 29, 1916.
- 21 Mexico—United States. The troops of the United States and Mexico fought a battle at Carrizal, Mexico. N. Y. Times, June 22, 1916.
- 23 European War. Greece. Announced that Greece had agreed to comply with the entire demands of France, Great Britain and Russia relative to the demobilizing of the Greek Army, the dissolution of the chamber and election of a new one, and replacement of certain objectionable police functionaries. France, Great Britain and Russia under the protocol of London signed July 6, 1827, assumed the protection of the Kingdom of Greece. Text: British and Foreign State Papers, 14:632. Text of demand of the Allies: N. Y. Times, June 23, 1916; London Times (Weekly), June 30, 1916.
- 24 Mexico—United States. Mexico sent note to the United States stating that General Carranza had given orders to General Trevino not to permit the advance of American troops south, east or west and to oppose new incursions of American soldiers into Mexican territory. N. Y. Times, June 26, 1916.
- 24 Mexico—United States. Announced that Argentine Republic, Chile, Ecuador, Salvador, Honduras and Spain had offered mediation. N. Y. Times, June 26, 1916.

June, 1916.

- 25 Mexico—United States. The United States replied to the note of Mexico dated June 24 and demanded the immediate surrender of the American troops taken at Carrizal. Text: N. Y. Times, June 26, 1916. On June 28 the Mexican Consul at El Paso informed General Bell that the prisoners would be released. N. Y. Times, June 29, 1916.
- 27 EUROPEAN WAR. GREAT BRITAIN. Additions made to the contraband lists of Oct. 14, 1915, Jan. 27 and April 12, 1916.
 London Gazette, No. 29642, 29647.
- 27 Great Britain—Sweden. Announced that Great Britain and Sweden have agreed to submit to arbitration after the war the question of the legality of the seizures of postal parcels. Washington Post, June 28, 1916.
- 27 European War. Reported that Great Britain has announced willingness to submit to arbitration questions arising out of prize court decisions which may prove unsatisfactory to neutral governments. Washington Post, June 28, 1916.
- EUROPEAN WAR. FRANCE. Additions made to the contraband lists of Nov. 6, 1914, Oct. 14, 1915, Jan. 27 and April 13, 1916. J. O., June 28, 1916.
- 28 Germany—Switzerland. Reported that Germany's demands on Switzerland for the exchange of commodities are in the form of an ultimatum which expires at 6 P. M. June 28. Announcement was made in the Swiss Parliament last week that Germany had demanded that Switzerland permit the export of cotton and foodstuffs collected by German agents, stating that if the demand were not complied with Germany would prohibit the export of coal, iron and other materials essential to Swiss industries. Washington Post, June 29, 1916.
- 28 EUROPEAN WAR. Sir Robert Cecil announced in the House of Commons that as a result of the conference recently held in Paris the British and French governments had decided to discontinue partial enforcement of the Declaration of London. N. Y. Times, June 29, 1916.
- 30 Mexico—United States. Carranza issued a proclamation charging bad faith on the part of the United States. Text: N. Y. Times, July 1, 1916.

INTERNATIONAL CONVENTIONS

ADHESIONS, RATIFICATIONS, DENUNCIATIONS

LITERARY AND ARTISTIC PROPERTY. Berne, 1908, 1914. Ratifications:

France, J. O., April 11, 1916.

Postal Convention. Rome, 1906.

Ratifications:

Ecuador. J. O., May, 10, 1916.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN 1

Aliens restriction amendment order, Jan. 27, 1916. (St. R. & O. 21.)

1½d.

———. List of prohibited areas, 1916. 1½d.

———. Consolidation order. Feb. 29, 1916. (St. R. & O. 122.)

——. Order in Council amending. March 30, 1916. (St. R. & O. 191.) 11/6d.

Baralong, H. M. Auxiliary cruiser. Further correspondence with the German Government in regard to incidents alleged to have attended the destruction of a German submarine by the, on August 19, 1915. (Cd. 8176.) 1½d.

British Nationality and Status of Aliens Regulations (India). Jan. 19, 1916. (St. R. & O. 120.) 1½d.

Contraband of war, List of articles declared to be. (Cd. 8226.) 1d.

———. Proclamation making additions to and amendments in list of. Jan. 27, 1916. (St. R. & O. 26.) 1½d.

——. Order in Council, April 12, 1916, making certain additions to and amendments in list of articles. (St. R. & O. 226.) 1½d.

Declaration of London. Order in Council, March 30, 1916. (St. R. & O. 197.) 1½d.

Defense of the Realm Regulations made to Feb. 15, 1916, reproduced in consolidated form. With notes. 7d.

European War. Naval and military despatches relating to operations in the. Part III. July-October, 1915. 4½d.

Exports. Prohibitions of export in force in the United Kingdom and in certain allied and neutral countries. (Supplement to the *Board of Trade Journal*, Feb. 17, 1916.) 3½d.

¹ Official publications of Great Britain and many of the British colonies may be purchased of Wyman & Sons, Ltd., Fetter Lane, E. C., London, England.

1½d.

Golconda, S. S., Further correspondence with the United States Ambassador respecting the safety of alien enemies repatriated from India on the. (Cd. 8178.) 1½d.

Goltz, Horst von der, alias Bridgeman Taylor. Sworn statement by. (Cd. 8232.) 2d.

Mails. Examination of parcels and letters. Memorandum presented by His Majesty's Government and the French Government to neutral governments regarding the. (Cd. 8223.) 1½d.

Mails on neutral vessels, Treatment of. Correspondence with United States Ambassador. (Cd. 8173.) 1d.

Naval Prize Procedure Act. (6 Geo. V, Ch. 2.) 1d.

Papen, Captain von. Selection from papers found in possession of, Falmouth, Jan. 2 and 3, 1916. (Cd. 8174.) 7d.

Red Cross Convention, 1906, Declaration withdrawing British reservation in respect of Articles 23, 27 and 28. Signed at Berne, July 7, 1914. (Treaty series, 1916, No. 1.) 1d.

Trading with the Enemy Act Amendment. (5 & 6 Geo. V, Ch. 105.) 2d.

Trading with the Enemy Extension of Powers Act, 1915, Correspondence with the United States Ambassador respecting the. (Cd. 8225.) 1d.

Trading with the Enemy (Vesting and application of property.) Amendment Rules, March 29, 1916. (St. R. & O. 213.) 1½d.

Trading with the Enemy. Order in Council making exceptions and adaptations in Trading with the Enemy Acts and Customs War Powers Acts, in their application to persons or bodies of persons mentioned in the statutory list. Order in Council Feb. 29, 1916. (St. R. & O. 126.) 1½d.

Trading with the Enemy (neutral countries) proclamation. Feb. 29, 1916. (St. R. & O. 125.) 1½d.

——. Orders in Council varying statutory list in Trading with the Enemy (Neutral Countries) Proclamation. 1916. March 16 and 24, April 7, and 14, 1916. (St. R. & O. 175, 189, 219 and 236.) 1½d. each.

Wittenberg Camp. Report by the government committee on the treatment by the enemy of British prisoners of war regarding the conditions obtaining at the Wittenberg Camp during the typhus epidemic of 1915. (Cd. 8224.) 2d.

UNITED STATES 2

Armed merchant vessels, Report on H. Res. 147, requesting the President to warn American citizens to refrain from traveling on. March 6, 1916. 1 p. (H. rp. 293.) Foreign Affairs Committee.

——. March 7, 1916. 1 p. (H. rp. 304.) Rules Committee.

Armies of France, Germany, Austria, Russia, England, Italy, Mexico, and Japan, showing conditions July 1, 1914. 1916. 82 p. il. (Pub. No. 22, new series; War Dept. doc. 499.) Paper, 10c.

Citizenship. Compilation of certain Departmental circulars relating to citizenship, registration of American citizens, issuance of passports, etc. 1916. 88 p. State Dept.

Congress of neutral nations, Hearings on H. J. Res. 38, calling upon the President of the United States to call a, to offer mediation to belligerents in Europe. Feb. 24–25, 1916. 75 p. Foreign Affairs Committee.

European War, 1914. Finances and costs of. 1916. 11 p. (War Dept. doc. 512.) War College Division.

Immigration, Hearings on H. R. 558 to restrict. 1916. Immigration and Naturalization Committee.

Immigration, Restriction of. Report to accompany H. R. 10384. April 17, 1916. 18 p. (S. rp. 352.) Immigration Committee.

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GEO. A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

THE GUTENFELS. THE BARENFELS. THE DERFFLINGER

Judicial Committee of the Privy Council

Decided April 7, 1916

(The Times Law Reports, Vol. 32, p. 433)

By Art. 1 of the Sixth Hague Convention, 1907, "When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely either immediately or after a reasonable number of days of grace." By Art. 2, "A merchant ship which, owing to circumstances beyond its control, may have been unable to leave the enemy port within the period contemplated in the preceding article, or which was not allowed to leave, may not be confiscated. The belligerent may merely detain it on condition of restoring it after the war, without payment of compensation, or he may requisition it on payment of compensation."

On August 4, 1914, war broke out between Great Britain and Germany, and a British Order in Council was issued recognizing Art. 1 (supra) conditionally upon Germany doing the same within a limited time. Germany did not do so, and the Order in Council did not come into operation.

The G. was a German ship which arrived at Port Said on August 5, 1914, in ignorance that hostilities had broken out between Great Britain and Germany. From August 5 to August 14 she was not free to leave, but on the latter date she was informed that she might do so. She did not leave, and on October 13 the Egyptian Government put a crew on board, and on October 16 they took her to sea and conducted her to a British warship, which seized her as prize and took her to Alexandria. On November 5, 1914, Great Britain declared war on Turkey, and on December 18, 1914, declared Egypt to be a British protectorate. The Egyptian Prize Court decided that the G. was entitled to detention in lieu of confiscation and that in accordance with Art. 2 (supra) she should be restored or her value paid to the owners at the conclusion of hostilities.

Held, on appeal, that even if the Hague Convention applied and if the Order in Council of August 4, 1914, extended to Egypt, the failure of Germany to concur in recognizing Art. 1 prevented Art. 2, so far as it was complementary to Art. 1, from coming into operation, that therefore the British Government was entitled to seize and detain the G. during the war, and that the appeal must be allowed and an order

made merely for the detention of the ship, leaving the ultimate rights of the parties to be determined after the war.

The court made a similar order in the case of the B.

The D. was a German ship intended for conversion into a ship of war, and she took refuge in Port Said on August 2, 1914, on account of the war between Germany and France and between Germany and Russia. The Hague Convention does not apply to a ship intended for such conversion. The Egyptian Prize Court made an order for her confiscation.

Held, that the order for confiscation was right and the appeal must be dismissed.

These were three appeals from orders of the Supreme Court for Egypt in Prize. The Crown appealed in the cases of the *Gutenfels* and the *Barenfels*. In the case of the *Derftinger* the Crown was the respondent. Lord Wrenbury delivered the following considered judgments of the Board:

THE GUTENFELS

The Gutenfels is a German ship. Bound from Antwerp for Bombay and Karachi, she arrived at Port Said in the afternoon of August 5, 1914, and entered the port while still ignorant (as is now admitted) that hostilities had broken out between Great Britain and Germany. From August 5 to August 14 she was not free to leave. On August 14 she was informed that she was free to proceed if she liked. Matters so remained until October 13. She never asked for a pass. She was not offered one. On October 13, 1914, the Egyptian Government put a crew on board, and on October 16 they took her to sea and conducted her to H. M. S. Warrior, which seized her as prize and took her to Alexandria. It is admitted that this was done by arrangement between the Egyptian Government and the British Government.

At the date of these events war had not been declared between Great Britain and Turkey, and Great Britain had not declared Egypt to be a protectorate. The date of the declaration of war with Turkey was November 5, 1914. The date of the declaration of the protectorate was December 18, 1914.

The Egyptian Prize Court has pronounced the ship to have belonged at the time of seizure to enemies of the Crown, and to have been seized in such circumstances as to be entitled to detention in lieu of confiscation, and has ordered the ship to be detained by the marshal until further order; and has further declared that, in accordance with the provisions of Article 2 of No. VI of the Hague Conventions, the ship must be restored or her value paid to the owners at the conclusion of hostili-

ties. From this order the Crown appeals. There is no cross-appeal. The Crown contends that the ship ought to be confiscated, or, at any rate, that the question whether she ought to be confiscated, or whether, on the contrary, she must be restored or her value paid to the owners at the conclusion of hostilities, should be left to be determined after the war, and that in default of confiscation the order should be for detention till further order, with liberty to apply as in the case of *The Chile* (31 *The Times*, L. R. 3; [1914] P., 212). The respondents, having no cross-appeal, cannot contest the order which imposes detention.

The points which have been argued before their lordships are numerous. Upon some of them it is unnecessary to pronounce any opinion: First, to the Hague Convention No. VI. (which is the relevant Hague Convention, and will hereinafter be styled simply the Hague Convention) Egypt was not a party. The question has been raised whether, having regard to the anomalous position in which Egypt stood, the Hague Convention applies to Egypt. Their lordships find it unnecessary to determine this question. They will assume, in favor of the respondents, that the Hague Convention does apply to the case before them.

Secondly. The question has been argued whether Port Said was, within the meaning of the Hague Convention, an "enemy port"—that is, a port enemy to Germany. Having regard to the relations between Great Britain and Egypt, to the anomalous position of Turkey, and to the military occupation of Egypt by Great Britain, their lordships do not doubt that it was. In Hall's *International Law*, Sixth edition, p. 505, the learned author writes:—

When a place is militarily occupied by an enemy, the fact that it is under his control, and that he consequently can use it for the purposes of his war, outweighs all considerations founded on the bare legal ownership of the soil.

Their lordships think this to be right.

Thirdly. A question has been raised whether, in the events which have happened, the Hague Convention was operative and binding at the date of the events with which the Board are concerned in this case. The respondents say that it was. The law officers of the Crown have stated in the plainest terms that the British Government abide by the Hague Convention and look to Germany to do the same. The British Government, by the Order in Council of August 4, 1914, presently mentioned, acted under the Hague Convention. It is unnecessary to determine whether the Hague Convention applies or not. Their lordships will assume in favor of the respondents that it does.

It results that the only question for determination is the construction and meaning of the Hague Convention, and that question reduces itself to the decision of a single point, viz., whether Article 2 is, or whether any part of it is, obligatory, or whether, if the course referred to as "desirable" in Article 1 be not taken, Article 2 has or has not any application to a vessel which finds itself in an enemy port at the commencement of hostilities, or which, having left its last port of call before the commencement of hostilities, enters an enemy port without having heard of the hostilities. The respondents contend that it has, the appellants that it has not. The question is one of law arising on an international document involving a reciprocal obligation performable only at the end of the war. If this Board were now to determine this question of construction, Germany might hereafter take a different view, and the performance of the obligation, as a reciprocal obligation, might become impossible.

The order made by the Egyptian court determines that the ship must be restored or her value paid at the conclusion of hostilities. If this order were to stand and at the conclusion of hostilities Germany maintained that the construction upon which that order is based was wrong and refused to restore or pay the value of British ships seized and detained by Germany in like circumstances, the performance of the obligation as a reciprocal obligation would be impossible unless achieved by diplomatic action. In these circumstances the construction for which the respondents contend, involving as it does a reciprocal obligation performable only at the end of the war cannot at present be fully determined by their lordships in the absence of knowledge of the future attitude of the respective belligerents in that regard. Accordingly they think it incompetent to dispose of this question of construction at present.

It remains to apply the above considerations—subject to the above reservations—to the case before the Board.

On August 4, 1914, an Order in Council was issued recognizing and acting upon Article 1 of the Hague Convention, conditionally upon Germany within a limited time doing the same. Germany did not do so, and the Order in Council did not come into operation. If this Order in Council included Egypt, the result of Germany's refusal to concur was that neither Article 1 nor Article 2, so far as it is complementary to Article 1, took effect as regards Port Said. If, as their lordships incline to think, it did not extend to Egypt, it may, of course, be set out of con-

sideration. In either case nothing turns upon this Order in Council, except that it evidences the desire of Great Britain to take that which the Hague Convention indicated as the reasonable course. Their lordships do not forget that the respondents placed some reliance upon this Order in Council as assisting in the construction which they place upon the Hague Convention, but their lordships are unable to accept the view that it is of any service for this purpose. Even if at the date of this Order in Council Great Britain took a particular view of the construction of the Hague Convention, that fact throws no light upon the question as to what is, in fact, the true construction.

On August 5, 1914, the Egyptian Government issued a "Décision," or decree, similar in some respects to the Order in Council of August 4. This granted days of grace to sunset on August 14 to ships of not more than 5,000 tons gross. But as the *Gutenfels* was more than 5,000 tons it did not apply to her.

The facts then are (assuming, as for the purposes of this judgment their lordships do assume, that the Hague Convention applies) that Article 2, so far as it was complementary to Article 1, never came into operation by reason of the fact that as between Great Britain and Germany the recommendation agreed to by Article 1 failed, by reason of the action, or, rather, the inaction, of Germany, to be carried into effect by the contracting parties. In these circumstances, there being nothing which entitled the Gutenfels to remain in the port (for she had long exceeded any such limited right as might arise from a right of passage through the canal, assuming that she had such a right), there was nothing to prevent the Egyptian Government and British Government acting as they did, and at the least seizing and detaining her during the war, to await at the conclusion of the war the determination of the questions above reserved. The order which, in their lordships' judgment, will be right will be an order allowing the appeal, and substituting an order in the terms of that in the case of The Chile (supra), leaving the ultimate rights between the parties to be determined after the war.

Their lordships will humbly advise His Majesty accordingly.

They think that each party should bear his own costs of this appeal.

THE BARENFELS

This vessel, bound from Hamburg and Antwerp to Colombo, Madras, and Calcutta, arrived at Port Said on August 1, 1914, and was still there on August 4 and 5. Except that she was in Port Said before and at the

commencement of the war, the relevant facts are identical with those in the case of the *Gutenfels*. This case is governed by the decision in the *Gutenfels*, and their lordships will humbly advise his Majesty that the same order should be made.

THE DERFFLINGER

This vessel showed by her build that she was intended for conversion into a warship. The Hague Convention therefore does not apply (see Article 5). She passed through the canal, and arrived at Port Said on August 2 on a voyage from Yokohoma to Bremen. Her log contains the following entries:—

"1914, August 2: arrived Port Said. The journey cannot be continued on account of the war."

"August 3; passengers and baggage landed."

Under the International Suez Canal Convention of 1889 she was entitled to use the canal for the purposes of passage. She had used it, and the above entries show that her voyage of passage was over; that her journey was, in her view, rendered abortive by reason of the war, and that she had accordingly landed her passengers and cargo. Port Said was, on August 2 and 3, a neutral port. The war which caused the discontinuance of the ship's voyage was the war between Germany and France and that between Germany and Russia. When war broke out on August 4 between Germany and Great Britain the vessel was lying in Port Said, not in exercise of a right of passage, but by way of user of the port as a port of refuge. Under these circumstances the Canal Convention had ceased to be operative and she was not entitled to any protection. The ship was a German ship lying in an enemy port, and was a ship to which the Hague Convention did not apply.

If any justification were necessary for the subsequent acts of the Egyptian and British Governments, it is found in the fact that the ship, while lying in the port, was using her wireless for communicating information to the German warships the *Goeben* and the *Breslau*. In their lordships' opinion, the order for her confiscation was right, and this appeal should be dismissed. The order should be varied, however, so as to run "and as such or otherwise subject and liable to confiscation and condemned the said ship as good and lawful prize seized on behalf of the Crown" and in other respects should be in the form of the order under appeal. Their lordships will advise his Majesty accordingly. The appellants will pay the costs of the appeal.

THE PINDOS. THE HELGOLAND. THE ROSTOCK

Judicial Committee of the Privy Council

Decided April 13, 1916

(The Times Law Reports, Vol. 32, p. 489)

The Suez Canal Convention of 1888 is not applicable to ships using Port Said not for the purpose of passage through the canal or as one of its ports of access, but as if it was a neutral port in which to seclude themselves for an indefinite time in order to defeat belligerents' rights of capture, after abandoning any intention there may have been to use the port as a port of access in connection with transit through the canal.

These were appeals from three decrees of his Britannic Majesty's Supreme Court for Egypt in Prize of February 17, 1915.

Lord Sumner in delivering their Lordships' judgment said: These are three appeals from three decrees of his Majesty's Court of Prize in Egypt condemning these vessels as lawful prize. In view of the fact that reliance was placed on immunities alleged to be claimable under international conventions no objection has been raised, such as was raised in The Möwe (31 *The Times L. R.*, 46; [1915] P., 1), to the presence of enemy owners to be heard before their lordships on appeal.

The steamship *Pindos* is a steamship of 2,933 tons gross, which belonged to the Deutsche Levant Linie, of Hamburg. In the course of a round voyage from Antwerp to eastern Mediterranean ports she entered Port Said at 2 a. m. on August 1, 1914. Her next port would have been Through her agents at Port Said she "received on the Syrian coast. orders not to proceed until further instructions." She discharged her Port Said cargo and continued to lie in her berth. On August 14 the captain was informed by the authorities that he was free to sail and would receive a pass, if he would call for it at the port-office. This he did not do, having been informed by someone, but inaccurately, that the harbor of Port Said had been declared neutral. In fact, by that date Egypt was in a state of hostility de facto to the German Empire. On August 22 a pass for Beirut was actually delivered to him. He says that he doubted its validity—which, in truth, he had no grounds for doing but, since he was advised by his agents to stay in Port Said as it was a neutral port, his reasons for staying there are clear.

On October 15 he was taken outside the limits of Port Said and of territorial waters in charge of persons appointed for the purpose by the Egyptian authorities, and then was captured by H. M. S. Warrior in latitude 31° 24½' north and longitude 32° 20¾' east. Upon these facts a decree of condemnation as prize was pronounced in his Majesty's Supreme Court for Egypt in Prize on February 17, 1915, from which this appeal is brought.

The steamship *Helgoland* is a steamship of 5,666 tons gross, which belonged to the Norddeutscher Lloyd, of Bremen. On July 29, 1914, she entered the Suez Canal bound with general cargo from Singapore to Rotterdam and Bremen, and reached Port Said on July 30. Her captain had made preparations to continue his voyage and leave Port Said on July 31, but on his arrival he received instructions from his owners to stay there. He recorded in his log on that day "German mobilization," and on August 17 and 18 he paid off a large number of his crew. A pass was offered to him in the same way as to the captain of the *Pindos*, but he did not avail himself of the offer. Another was actually delivered also as in that case, of which, though it was valid, no use was made. The reason for this again was that the captain, on the same pretext, had definitely decided, in accordance with his owners' instructions, to stay where he was. Subsequently the Helgoland also was taken outside Egyptian territorial waters by persons employed by the Egyptian authorities, and there captured by H. M. S. Warrior on October 15 at about the same place. She was duly condemned as prize on February 17, 1915.

The Rostock was a steamship of 4,957 tons gross, which belonged to the Deutsche-Australische Dampfschiffsgesellschaft, of Hamburg. She came through the Suez Canal from eastern ports with general cargo bound, no doubt, for a home port, and arrived at Port Said on July 31 and began to discharge such part of her cargo as was deliverable there. While doing so her captain received a cablegram from his owners at Hamburg to wait further orders. His log records on August 1: "In order to protect ship and cargo from the attacks of the enemy, shall remain until further notice in Port Said as the harbor is neutral." On August 17 to 19 the ship discharged her cargo of frozen meat. After July 31 the captain received no further communication from his owners. He was treated by the Egyptian authorities in respect of the offer of a pass, the actual delivery of a valid pass subsequently, and the removal of his ship outside Egyptian territorial waters, exactly as the captains

of the *Pindos* and the *Helgoland* were treated. He behaved in the same way and for the same reasons. The *Rostock* was captured by the *Warrior* on October 15, and was condemned as prize on February 17, 1915.

The claimants in their petitions formally relied on what in each case were substantially the same defences, namely: (1) the benefit of the sixth Hague Convention of 1907, Articles 1 and 2; (2) the benefit of Article 4 of the Suez Canal Convention of 1888, confirmed by Article 6 of the Anglo-French Agreement of 1904; (3) the formal invalidity and the practical inefficiency of the passes which were offered by the Egyptian authorities; (4) considerations of equity and natural justice arising out of the circumstances under which the ships were ejected from Egyptian waters.

Of these points the first has already been dealt with sufficiently by their lordships in the case of The Gutenfels (32 The Times L. R., 433)1 and the third in that of The Concadoro (32 The Times L. R., 465).² Of the second all that need be said is this: Whatever questions can be raised as to the parties, to and between whom the Suez Canal Convention, 1888 is applicable, and as to the interpretation of its articles, one thing is plain, that the convention is not applicable to ships which are using Port Said not for the purposes of passage through the Suez Canal or as one of its ports of access, but as a neutral port in which to seclude themselves for an indefinite time, in order to defeat belligerents' rights of capture, after abandoning any intention there may ever have been to use the port as a port of access in connection with transit through the canal. Those responsible for the ships took their course deliberately, and took it before August 14. The captains appear, as was only natural, to have consulted together and to have acted in concert. In the case of the Helgoland, her owners in Bremen, doubtless well-informed persons, as early as Thursday, July 30, 1914, if not earlier, were so assured, though no ultimatum had then been issued, that Germany would shortly be at war, and England and Egypt would be neutral, that they ordered her captain to stop in Port Said instead of trying to reach a Turkish, a Greek, an Italian, or an Austrian port. It is no light responsibility to stop a ship of over 5,000 tons with general cargo in mid-voyage for an indefinite period, and thus to imperil insurances alike on ship and cargo, and to incur heavy expenses and probably heavy claims from cargo-owners as well; but this responsibility was taken. Their lordships are of opinion

¹ Printed in this Journal, p. 629.

² Ibid, p. 637.

that the evidence amply justified the decision of the prize court in each case, that the ships were using Port Said simply as a port of refuge, and therefore without any right or privilege arising out of the Suez Canal Convention, 1888. Hence their expulsion by the Egyptian authorities, when it had become plain that they would not leave of themselves, affords no answer to the claim for condemnation in natural justice, or equity, or law. In view of their common election to remain, no distinction can be drawn between the ships which had used the canal and the *Pindos*, which never meant to use it at all. By August 14 liability to capture and condemnation had accrued in each case, and no circumstance then existing or arising thereafter annulled that liability. The general question of costs has been dealt with in the case of *The Zamora* (32 *The Times* L. R., 436).³

Their lordships will humbly advise his Majesty that in each of these three cases the appeal should be dismissed with costs.

The orders should in each case be varied, however, so as to run, "and as such or otherwise subject and liable to confiscation and condemned the said ship as good and lawful prize seized on behalf of the Crown," and in other respects should be in the form of the orders under appeal.

THE CONCADORO

Judicial Committee of the Privy Council

Decided April 14, 1916

(The Times Law Reports, Vol. 32, p. 465)

A pass offered under Art. 1 of the Sixth Hague Convention of 1907 is not invalidated by its being offered on manifestly reasonable conditions.

In Art. 2 of the same convention the expression "force majeure," with regard to the inability of a vessel to leave an enemy port within the days of grace, refers to something which renders the vessel unable to leave the port, and it does not include the circumstance that the master has not been provided by the owners with sufficient financial resources to continue his voyage.

This was an appeal from a judgment of the Supreme Court for Egypt in Prize of March 23, 1915.

Lord Parmoor, in delivering their lordships' judgment, said:—The steamship Concadoro is an Austrian vessel (1,813 tons gross and 1,198

³ This Journal for April, 1916, p. 422.

tons net register), registered at Trieste. On August 1, 1914, the Concadoro left the port of Cardiff under charter to Messrs, D. L. Flack and Son, with a cargo of patent fuel destined for consignees at Port Sudan. She arrived at Port Said on August 18, 1914, her master being ignorant that war had broken out between Great Britain and Austria-Hungary. Owing to the outbreak of war, the master was not provided by the managing owner with funds to enable him to continue his voyage, and decided to remain at Port Said, fearing to put to sea lest he should be captured by British men-of-war. The master says that he believed Port Said to be a neutral port. Their lordships have already found that Port Said was not at this date in fact a neutral port, and that, under the Suez Convention, the ships of belligerents had no right to make it a port of refuge (The Gutenfels, 32 The Times L. R., 433). It is only because Port Said has at the said date to be regarded as an enemy, and not a neutral, port, that the appellants are able to found their case on the application of Articles 1 and 2 of the Hague Convention No. 6 of 1907, assuming for the purposes of the appeal that the Hague Convention applies, as their lordships have done in other appeals from the Egyptian court.

Immediately on arrival the *Concadoro* came under the general precautionary order issued by the General Officer Commanding British troops, that no enemy vessel was to enter the canal. The *Concadoro* was free to return to the Mediterranean. On September 22, 1914, the master of the *Concadoro* was offered a safe-conduct to Port Sudan, and thence to Basra, on the terms comprised in the following:

Sir.-

I am instructed to inform you as follows:

The coal cargo of the Concadoro being required at Port Sudan, you are requested to proceed to that port and discharge it to the consignees' order.

If you will agree to do so, the Egyptian Government is authorized by the British Foreign Office to grant you a safe-conduct to the said port, and from thence to the port of Basra, a neutral port, on the following conditions:

- 1. The Concadoro must leave Port Said on or before September 27, and must proceed direct to Port Sudan, arriving there not later than six days from date of departure from Port Said.
- 2. She must discharge without delay the 1,900 tons of patent fuel to the consignees, Messrs. Contomichalos, Darke, and Co., and 48 hours after completion must leave Port Sudan for the neutral port named above.
- 3. The Concadoro will be liable to capture in the event of any infringement of the foregoing conditions.
 - ¹ Printed in this JOURNAL, p. 629.

You are requested to give me a written answer to this letter as soon as possible, and, in the event of your acceptance of the conditions named, you will be good enough to apply to this office for the safe-conduct referred to, at the same time informing me of the date and time you propose to enter the canal.

(Signed)

C. E. D. TRELAWNEY,

Captain of Port.

On September 23 the master replied:

I beg to thank you for your letter of the 22nd, but in reply I regret to inform you that, on account of the present political situation, I cannot see my way to undertake the voyage to Port Sudan before the end of hostilities. I can only deliver the cargo here against original bill of lading and signature of bond with deposit for general average.

Their lordships would not desire to place undue weight on this letter, but the claim of the master not to prosecute the voyage to Port Sudan before the end of hostilities in substance amounts to a claim to use Port Said as a port of refuge. It is material that at this date the master of the Concadoro had received an offer by the consignees of the cargo to advance the sum of £530 for the canal dues and disbursements at Port Said. On October 22 the Concadoro was taken out to sea, under instructions from the Director-General to the Port and Lights Administration of Egypt. and steered northwards towards a British destroyer which was lying outside the harbor. The vessel was boarded by officers and crew of the destroyer, brought back to the point from which she had started in the morning, and was then taken over by a crew from H. M. S. Warrior. The next day the Cancadoro, in charge of a crew from the Warrior, left Port Said for Port Sudan. The cargo was discharged at Port Sudan and the Concadoro was taken to Alexandria, where she arrived on November 17. The Concadoro was subsequently condemned as an enemy ship properly seized as prize, and this appeal is against the order for condemnation.

On the hearing of the appeal two arguments were urged on behalf of the *Concadoro* as differentiating her case from that of the other appeals from his Britannic Majesty's Supreme Court of Egypt in Prize, which had come before their lordships. In the first place, it was argued that the words in Article 1—

il est désirable qu'il lui soit permis de sortir librement, immédiatement ou après un délai de faveur suffisant, et de gagner directement, après avoir été muni d'un laissez-passer, son port de destination ou tel autre port qui lui sera désigné.

entitled the master to receive a pass, and more than that a wholly unconditional pass, direct to the port of destination or any other port indicated, and that by reason of the conditions attached to the offer made on September 22, 1914, the safe conduct was not a proper pass within the meaning of Article 1. Their lordships agree with the view of Mr. Justice Grain, that the conditions attached in the circumstances were manifestly reasonable. The conditions were that the master of the Concadoro should discharge his cargo at the port to which it was consigned, arriving there after the allowance of a sufficient time for the voyage from Port Said; that she must discharge her cargo without delay, and that 48 hours after completion she must leave Port Sudan for Basra, a neutral port, to which the master had originally intended to proceed after discharging the cargo at Port Sudan. Their lordships hold that manifestly reasonable conditions do not invalidate a pass offered under Article 1. To adopt so narrow a construction of the article would, in their opinion, unduly restrict the benefits intended to be conferred for the protection of mercantile international operations undertaken in good faith and in process of being carried out before the outbreak of hostilities.

In the second place, it was argued that the inability of the master to procure the necessary funds for his voyage brought the *Concadoro* under Article 2, and that she was unable to leave the enemy port within the days of grace "par suite de circonstances de force majeure." In their lordships' opinion this contention cannot be maintained. The force majeure contemplated in the article is one which renders the vessel unable to leave the port, and cannot be construed to include the circumstance that the master has not been provided by the owners with sufficient financial resources to continue his voyage. Moreover, in the present case the master of the *Concadoro* was offered a loan of £530, which was a sufficient sum to enable him to pay the charges at Port Said and of the Suez Canal and to take his vessel to Port Sudan.

Their lordships are of opinion that the order appealed against was properly made, and will humbly advise his Majesty that the appeal be dismissed, with costs. The order should be varied, however, so as to run "and as such or otherwise subject and liable to confiscation and condemned the said ship as good and lawful prize seized on behalf of the Crown," and in other respects should be in the form under appeal.

THE ALWINA

British Prize Court

Decided May 5, 1916

(The Times Law Reports, Vol. 32, p. 494)

Where a neutral vessel with false papers has been engaged in carrying contraband intended to be delivered to enemy agents or enemy vessels of war, but that intention has been frustrated or abandoned and the goods have been sold and delivered to other buyers, the vessel if captured and seized as prize on the return voyage is not liable to confiscation.

The facts are stated in the judgment.

The President, in giving judgment, said:

The S. S. Alwina is a neutral vessel of Rotterdam and the property of a Dutch company. She was seized at Falmouth. The claim of the Crown as it appears by the writ is that the ship should be condemned as prize on the ground or grounds that at the time of seizure she was on her return passage from taking a direct part in hostilities and supplying or attempting to supply coals to warships, or to the naval forces of the enemies of the Crown, or otherwise being in the employment of the enemies of the Crown in violation of the neutrality of the ship.

Before considering and applying the law by which the case must be governed, it is essential to find the facts, and to determine the nature of the conduct of the vessel and her owner and master in relation to the voyage which it is alleged rendered her subject to seizure and confiscation on her return passage. She belonged to the Holland Gulf Stoomvaart Maatschappij, of Rotterdam. The managing directors were the firm of Jos. de Poorter, of Rotterdam, of which firm Jos. de Poorter, a Dutch subject, was the sole partner. De Poorter acted throughout as her owner; and he will hereinafter be so described and treated.

The vessel was a steamship of a tonnage of 1,115 tons gross and 660 net. Her speed was 8–9 knots, with a consumption of fuel of about 9 tons a day. She carried a crew of about 17 hands. She was a cargo boat and had no accommodation for passengers. Until the outward voyage to be referred to, she had been employed in a western European trade chiefly between Holland, England and France.

But suddenly, and without any previous negotiations of which the

court has been given any information, on October 16, 1914, her owner entered into, or purported to enter into, a time charter with a firm described as Messrs. A. M. Delfino y Hermano, of Buenos Aires, at £700 per month, "to be employed in such lawful trades between any port or ports in the United Kingdom and/or Continent of Europe and America (not West) and back finally to a neutral and safe port of America (not West) or Europe as charterers or their agents shall direct."

Apparently the charterparty was signed at Rotterdam.

It was signed by De Poorter, and it was also subscribed with the name of the firm of Delfino y Hermanos, the charterers. By whom the name of the latter was signed is not known.

There appears to be a firm of the name of A. M. Delfino y Hermanos who carry on business at Buenos Aires as shipping agents, and they have acted for (amongst other shipowners) the Hamburg South America, and the North German Lloyd Lines. But it may be stated at once that in the transactions relating to this vessel and her charter and voyages there is no trace in the evidence, except in name only, of any such firm, or of anything done by it, or any person representing it, from first to last.

The charterparty was in evidence, and can be referred to. Under it (clause 3) the charterers were to provide and pay for coals, port charges, pilotages, loading and unloading expenses, &c. They were to pay for the hire in cash two-monthly in advance (clause 5). They had to furnish the master with all requisite instructions and sailing directions from time to time (clause 15). And they agreed to insure the steamer against all war risks for £17,000 (clause 22).

The steamer left Rotterdam on October 19, bound for Newport (South Wales).

On the same day de Poorter was apparently in this country. He bought a cargo of Welsh steam coal (about 1,500 tons) on that date from Messrs. Agius and Co., coal merchants, at Newport, to be shipped on the vessel f. o. b.

In his answer to interrogatories, de Poorter deposed that payment for the coal was received from Delfino y Hermanos on or about the same day. This was a bare statement without any particulars. There was no evidence or trace of any such payment.

On October 21 de Poorter made a declaration before a commissioner in London that he had made all necessary inquiries as to the ultimate destination of the coal shipped by him on the vessel, and that it was not intended for consumption "in any state at present at war with his Majesty."

On the next day (October 22) the vessel arrived at Newport.

In due course she loaded 1,606 tons of steam coal. She also took on board 43 tons of bunker coal to add to the 100 tons already in her bunkers. This was only a comparatively small portion of the fuel required for a voyage to Buenos Aires. The bill of lading was given on October 26. The port of delivery was Buenos Aires, and the consignees were Messrs. Delfino y Hermanos or their assigns, who were to pay freight "as per arrangement." There were three bills of lading in the set. None was produced except the captain's copy. The vessel was cleared from Newport as for Buenos Aires, and sailed on October 27. In the crew list from Newport a person named L. A. van Dongen appeared as "steward." In the crew list from Rotterdam this man's name does not appear at all, although he shipped there. In the wage and provision list later, he is entered as "passenger." This man, it was suggested, was on board as a supercargo; and there was evidence of this, which was not contradicted. On November 6 the vessel arrived at Teneriffe, on the alleged voyage towards Buenos Aires. She could not get to her alleged destination of course without replenishing her bunkers. master found it impossible to get coal for that purpose. He tried through de Poorter. The charterers whose duty it was to supply the coal do not appear to have been disturbed by any appeals to provide it. For some reason (unexplained because no evidence was forthcoming for the owner, charterers, or master) the master did not venture to deplete his cargo even to the extent of giving his steamer the necessary fuel for the rest of the voyage, although the cargo coal was supposed then to have been the property of the steamer's charterers.

The vessel remained at Teneriffe (Santa Cruz) until the end of December. Almost immediately after her arrival there the master discovered that he was suspected of having on board coals for German cruisers. According to a statement he made to Admiral de Robeck, he and the crew also after they reached Teneriffe had come to the conclusion that the probable object of the voyage was to coal a German warship. De Poorter wrote to the British Consul-General at Rotterdam later that the consignees (Messrs. Delfino) gave instructions direct to the master. No evidence of any such instructions was given to the court. Probably by reason of the failure to obtain bunker coal de Poorter instructed the Master by cable about November 25 that the

hire had not been paid, that the charter had therefore been cancelled, and that he should sell the coal. Various attempts were made to sell it. A contract seems to have been made through Van Dongen to sell to a Spaniard. The log of the vessel has two pages (pp. 55 and 56) missing, which would have contained entries from November 23 to December 11. Ultimately the coal was sold on December 19 to British merchants, Messrs. Hamilton and Co. Terms were made that a certain quantity should be left for bunkering purposes. It is unnecessary to point out in detail the inconsistent and uncorroborated accounts given in the correspondence and the answers to interrogatories of alleged arrangements made between de Poorter and Delfino y Hermanos about the voyage, the payment of the hire, the cancellation of the charterparty, the sale of the coal and so forth. They were worthless and wholly unreliable. Van Dongen left the vessel at Teneriffe. The court was not informed what became of him. While still in the ship, he appears to have advanced the master some money for expenses. The latter described him in a letter written in Dutch as "old charterer's agent" (in English and in inverted commas); and in others as the "passenger we have on board," and "our time charterer." Whether he was a Dutchman or German was left in doubt. Whether he was acting for de Poorter or Delfino, or both, can only be a matter of conjecture, but that his part in the transaction was not an honest commercial one is obvious.

The cargo was delivered in due course by the master to Hamilton and Co. and was paid for by them. It was declared by the master at the time of the sale to have been the property of de Poorter.

The vessel left Teneriffe on December 30 for Madeira for orders. She was boarded by British naval officers off Funchal on January 2, 1915: and her papers were examined. The Admiral ordered her to go to Gibraltar for further examination, accepting the undertaking of the master to take her there, as there was no accommodation for a prize crew. She arrived at Gibraltar on January 6, 1915, and was again boarded by British naval officers; her master and the papers were further examined. The boarding officer signed a certificate as follows on January 7:

I hereby certify that I have examined the papers and questioned the master of the ship about his cargo, he having been sent in to this port by H.M.S. Argonaut for further examination. I have reported to the S.N.O. all details, and have given the said master permission to proceed to sea.

The ship accordingly proceeded to sea on a voyage to Huelva pursuant to orders from her owner to load a cargo of sulphur ore, shipped by the Rio Tinto Company (Limited), and consigned to the Netherlands Government on behalf of the purchasers—the Centrale Guano Fabricken at Rotterdam. The charterparty had been arranged by de Poorter at Rotterdam. It was dated December 31, 1914, and was made between his company and the Centrale Guano Fabricken. The bill of lading was dated January 10, 1915.

The ship called at Falmouth, arriving on January 20. The authorities at the port seem at first to have suspected the cargo of sulphur; but on the 23rd the seizure was made on the grounds already referred to as having been set out in the writ.

I may briefly state that another ship of the same type belonging to the same owner, the Josephina, carrying coals from Cardiff to Buenos Aires, under a similar charterparty between de Poorter and Delfino, started a few days before the Alwina and got to various places on the South American coast, and was finally captured and condemned by the prize court of the Falkland Islands for carrying contraband, viz., coal, with the object of coaling German war vessels. Neither de Poorter nor Delfino nor the ship's master appeared in those proceedings. material question of fact is the character of the outward voyage on which the Alwina was engaged up to the time when she discharged the coal at Teneriffe. Mr. Bateson claimed that the evidence established that the vessel was taking a direct part in the hostilities; or that she was under the orders or control of an agent placed on board by the enemy government; or was in the exclusive employment of the enemy government; or that she should be regarded and treated on these grounds as an enemy vessel under Article 46 of the Declaration of London as adopted by the British Orders in Council. In any event, he contended that if she was to be regarded as a vessel engaged in carrying contraband to the enemy, she could be captured on her return voyage and condemned for her offence on the outward voyage. In my view there is no evidence which would warrant the court in finding that the vessel came within either of the categories specified in Article 46. It may be noted that the words "in the exclusive employment of the enemy government" in head III were in the official French "affrété en totalité par le Gouvernement ennemi."

The correct finding, in my view, is that the vessel, being a neutral vessel, was carrying contraband—namely, coal, intended to be delivered

to enemy agents, or enemy vessels of war encountered on the voyage; and that she was so carrying the contraband with false papers, with a suspicious supercargo, with a false destination, and in circumstances amounting to fraud in regard to belligerents. It matters not for the purpose of this decision who acted for Delfino y Hermanos, the alleged charterers, and consignees and purchasers, if anyone did. Their name may have been used with their consent by de Poorter for his own purposes, and for his sole profit, or for the joint profit of both. What is clear is that de Poorter, the shipowner himself, was an active party in the attempt to convey the contraband to the enemy by the false and fraudulent tricks and devices which were adopted.

On that finding, the matter of law for decision is whether the Alwina was subject to confiscation at the time of her seizure at Falmouth. The general rule which has been acted on is that when a neutral vessel carries contraband goods they are confiscable if captured in delicto; and that the vessel also if it belongs to the same owner, or if the owner has been implicated in a transaction veiled over with false papers or other deceitful devices, is subject to the same penalty. But when the goods have been deposited at the port or place of destination, the ship and cargo on the return voyage are exempt from the penalty (vide The Imina, 3 C. Rob., 167). But exceptions were made at the beginning of last century, where the outward voyage was made under false papers or with a false destination, or in circumstances where the voyage had been conceived and contrived so as to deceive and practise a fraud on a belligerent. In those latter cases the vessel and cargo have been held to be affected on the return voyage also.

It was, however, strenuously argued that, according to the law of nations, as now understood, the vessel and her cargo on the return voyage are free from the risk of capture for the carriage of contraband goods on the outward voyage, however that voyage was conceived or carried out.

In one aspect of the present case no question relating to the law applicable to the return voyage would arise. In the other it would. The aspect first referred to is this: The original intention of the owner was to carry contraband goods, and deliver them, to the enemy. That intention continued until the vessel failed to obtain bunker coal at Teneriffe, and possibly until the sale to Hamilton and Co. But, in fact, the goods were never carried or delivered to the enemy at all. On the contrary, they were sold and delivered to a British firm, though

that course was, no doubt, forced upon the vendor. In those circumstances could any penalty afterwards attach to the ship arising out of the original intention and its attempted performance? The terms "offence" and "penalty" have often been used in reference to the carriage of contraband goods, and their use does no harm so long as it does not produce confusion of thought. But it must be borne in mind that neutral merchants have the right to supply the enemy with such goods, subject only to the risk of losing their property. An "offence" in that sense is clearly committed from the beginning of the voyage and continued as long as it is in process of being carried out. But, according to the principles of prize law, if the intention and voyage have been clearly abandoned before seizure or capture, the offence is dissipated and purged, and neither the cargo nor the carrying instrument is subject to the penalty of confiscation, the delictum being over. similar principle applies where vessels have intended to run a blockade. Two cases may be referred to in illustration of the application of the doctrine in reference to blockade and contraband respectively even where the voyage has been abandoned, or its character changed, by force of circumstances outside the voluntary intention of those responsible for the vessel and goods. Both were decided by Sir William Scott in 1807. They are: The Lisette (6 C. Rob., 387) and The Trende Sostre (6 C. Rob., 390, note). In the latter case, the vessel was carrying contraband goods to the Cape of Good Hope while it was Dutch, but was not captured as prize until after it had been surrendered and became a British possession—Sir William Scott in his judgment said:

If the port had continued Dutch, a person could not, I think, have been at liberty to carry thither articles of a contraband nature, under an intention of selling other innocent commodities only, and of proceeding with the contraband articles to a port of ulterior destination. But before the ship arrives, a circumstance takes place which completely discharges the whole guilt. Because from the moment when the cape became a British possession, the goods lost their nature of contraband. They were going into the possession of a British settlement; and the consequence of any preemption that could be put upon them would be British pre-emption. It has been said that this is a principle which the court has not applied to cases of contraband; and that the court, in applying it to cases of blockade, did it only in consideration of the particular hardships consequent on that class of cases. But I am not aware of any material distinction; because the principle on which the court proceeded was, that there must be a delictum existing at the moment of seizure to sustain the penalty. It is said that the offence was consummated by the act of sailing, and so it might be with respect to the design of the party, and if the seizure had been made whilst the offence continued, the property would have been subject to condemnation. But when the character of the goods is altered, and they are not longer to be considered as contraband, going to the port of an enemy, it is not enough to say that they were going under an illegal intention. There may be the mens rea, not accompanied by the act of going to an enemy's port. I am of opinion, therefore, that the same rule does apply to cases of contraband, and upon the same principle on which it has been applied in those of blockade; I am not aware of any cases in which the penalty of contraband has been inflicted on goods not in delicto, except in the recent class of cases respecting the proceeds of contraband carried outward with false papers. But on what principle have those decisions been founded? On this, that the right of capture having been defrauded in the original voyage, the opportunity should be extended to the return voyage. Here the opportunity has been afforded till the character of the port of destination became British. Till that time the liability attached; after that, though the intention is consummated, there is a material defect in the body and substance of the offence, in the fact, though not in the intent. I am of opinion that it is a discharge, and a complete acquittal, that long before the time of seizure these goods had lost their noxious character of going as contraband to an enemy's port.

The same principle has been adopted and acted upon in the most recent wars by the prize courts of other countries. In the case of the Lydia, tried in 1906 in the course of the Russo-Japanese War, the decision of the Prize Court of Sasebo, and of the Higher Prize Court of Japan on appeal, proceeded on the ground that a ship transporting contraband of war to an enemy port was liable to confiscation, so long only as her intention to proceed to such a port had not been abandoned at the time of the capture (Takahashi's International Law, pp. 674-682).

In the case of the Rincluden (1905) the Prize Court at Sasebo found that the ship had intended to take contraband goods to Vladivostok—an enemy naval base—and also that her papers were false. Nevertheless, as the result of the court's investigation was that the ship had actually abandoned her first object of going to Valdivostok at the time of capture, and was steaming for a Japanese port to deliver the goods there, the court released the ship and cargo (Takahashi, p. 741). The Sishan is also an instance of an original intention which was abandoned before capture—of running a blockade and delivering contraband goods at a blockaded port (Takahashi, p. 742).

It will be observed also from the authorities, and from the provisions of the Declaration of London as medified and adopted, in reference to the outward voyage of contraband cargo, and the effect upon the ship's homeward voyage if false papers were carried on the outward voyage, that the assumption has always been that the contraband goods have been captured *in delicto* while on the intended voyage to the enemy

destination; or, in the case of a capture of a vessel on her return or homeward voyage, that the contraband goods had actually been delivered to the enemy or carried to the enemy destination. On this aspect of the present case, I am of opinion that the result, according to the principles and rules of international law, is that as the original intention to carry and deliver the contraband goods to the enemy had been frustrated and abandoned, and the goods themselves had been sold and delivered to other buyers before the vessel was seized, the vessel had become freed from any liability to confiscation.

If this conclusion should be brought to the examination of the tribunal of appeal, and should not meet with approval, it may be necessary to consider the case in its other aspect. The question argued is of substantial practical importance. It is whether according to international law as now understood, and as it should be administered in this court, a vessel which may have been subject to capture and confiscation for carrying contraband goods on an outward voyage remains subject to capture and confiscation upon the return voyage if on the outward voyage the ship carried false papers, or had a false destination, or was otherwise engaged in a deceptive and fraudulent transaction for the purpose of defeating legitimate belligerent rights. It will be remembered that in his judgment in The Trende Sostre (supra) Sir William Scott referred to the recent class of cases respecting the proceeds of contraband carried outward with false papers. The reported cases of that class commence about 1800 (see The Nancy, 3 C. Rob., 122). A couple of years later (1802) the Lords Commissioners of Appeal in Prize Cases lent their high authority to the legal proposition that the carriage of contraband outward with false papers would affect the ship as well as the return cargo with condemnation (see The Rosalia and The Elizabeth, mentioned in a note to the Table of Cases in front of Vol. 4 of C. Rob.). On reference to the record it will be seen that The Rosalia has sailed outward from Hamburg in June, 1798, with contraband under a fraudulent destination to Tranguebar, but being actually destined to the Isle of France when she delivered it. The vessel was captured on May 25, 1799, on a return voyage from the Isle of France to Hamburg. Both the vessel and the cargo (said to have been the proceeds of the outward vovage) were condemned.

As to *The Elizabeth*, the record shows similarly that she sailed outward from Hamburg in 1798 and carried contraband to the Isle of France, where it was delivered, whereas her papers falsely showed a destination

to Tranguebar. She was captured on March 29, 1799, on the return voyage from the Isle of France to Hamburg. In this case also both the vessel and cargo were condemned.

Subsequently the Lords of Appeal in *The Baltic* in 1809 (1 Acton, 25) and in *The Margaret* in 1814 (1 Acton, 333) regarded the matter as settled, even if the return cargo did not represent the proceeds of the outward contraband. Sir William Grant who presided and delivered the judgment in *The Margaret* said:

The principle upon which this and other prize courts have generally proceeded to adjudication in cases of this nature [that is, where there were false papers] appears simply to be this, that if a vessel carried contraband on the outward voyage, she is liable to condemnation on the homeward voyage. It is by no means necessary that the cargo should have been purchased by the proceeds of this contraband. Hence we must pronounce against this appeal, the sentence of the court below [which was one of condemnation of both ship and cargo] being perfectly valid, and consistent with the acknowledged principles of general law.

It is worth noting that in that case the outward voyage had taken place over three years before the capture, the vessel being engaged in various parts from 1804 to 1807.

The doctrine of these decisions had been criticized by jurists. The criticism began early by Wheaton in 1815. He called it an innovation not founded upon principle and argued that to subject the property to confiscation while the offence no longer continued would be to extend it indefinitely, not only to the return voyage, but to all future voyages of the same vessel, which could never be purified from the contagion communicated by the contraband articles. (See Wheaton's Maritime Captures, p. 183.) This criticism has been repeated literally by many since, but it does not appear to be sound, nor does the conclusion drawn seem to be warranted.

Quite the opposite view was taken and expressed by the Supreme Court of Mr. Wheaton's own country many years later, when Chief Justice Marshall and Mr. Justice Story were members of the court. The Supreme Court passed under review the cases already referred to (with others) in 1834 in Carrington v. Merchants' Insurance Company (8 Peters, 518). Of them Mr. Justice Story in delivering the judgment of the court said:

We cannot but consider these decisions as very high evidence of the law of nations, as actually administered; and in their actual application to the circumstances of the present case, they are not, in our judgment, controlled by any opposing authority.

Upon principle, too, we trust, that there is great soundness in the doctrine, as a reasonable interpretation of the law of nations. The belligerent has a right to require a frank and bona fide conduct on the part of neutrals in the course of their commerce in times of war; and if the latter will make use of fraud, and false papers, to elude the just rights of the belligerents, and to cloak their own illegal purposes, there is no injustice in applying to them the penalty of confiscation. The taint of the fraud travels with the party and his offending instrument during the whole course of the voyage, and until the enterprize has, in the understanding of the party himself, completely terminated.

This country in practice has certainly never given up in such cases the right of capture on the return voyage. In Wildman's International Law (1854) and in his Plain Directions to Naval Officers as to the Law of Search, Capture and Prize (1854) after the outbreak of the Crimean War the doctrine is maintained.

In Godfrey Lushington's *Manual of Naval Prize Law*, published with the authority of the British Admiralty in 1866, the paragraph (185) relating to the matter is as follows:

A vessel which carries contraband goods becomes liable to detention from the moment of quitting port with the goods on board and continues to be so liable until she has deposited them. After depositing them, the vessel, in ordinary cases, ceases to be liable; and therefore, as a general rule, a commander should not detain a vessel for carrying contraband goods unless he finds them actually on board. But simulated papers are an aggravation of the offence. If, therefore, a commander meets with a vessel on her return voyage and ascertains that on her outward voyage she carried contraband goods with simulated papers he should detain her; and the fact that the return cargo has not been purchased by the proceeds of the outward contraband cargo makes no difference.

The paragraph in the Manual edited by Mr. Holland in 1888 (Par. 80) is in identical terms.

It is right in passing to mention the cases of *The Allanton* (Russian Cases in Russo-Japanese War, p. 1) and *The Eastry* (Takahashi, p. 739). These decisions, however, proceeded in accordance with the written Code of Prize Regulations of Russia and Japan respectively, made for that war.

In 1908 the Memorandum issued by the British Foreign Office by way of Instructions to the British Delegates to the London International Naval Conference of that year deals with the matter as follows:

6. A ship carrying contraband as defined in section 1, may be seized at any moment throughout the whole course of her voyage so long as she is on the high seas or in

belligerent waters. The liability to seizure is not affected by the fact that the vessel is intending to touch at some neutral port of call before reaching the hostile destination.

When the contraband goods have been discharged, the liability to seizure is at an end. In exceptional cases it has been held that a ship which has carried contraband to the enemy on her outward voyage under circumstances aggravated by fraud and simulated papers is still liable to capture and condemnation on her return voyage.

I may finally mention that according to the present German Prize Code if the vessel carried contraband to the enemy contrary to the indications of the ship's papers, she is liable to capture and condemnation until the end of the war. In these circumstances whatever may have been written by jurists, I am not prepared to pronounce that the rule of international law upon the subject which has been declared and acted upon in this country by the highest prize courts, as also in those of America, has ceased to be in force. The ease with which in the circumstances of modern maritime trade papers and destinations can be falsified and frauds can be carried out in no way minimizes the obligations of neutrals engaged in such trade in time of war to act with frankness, straight-forwardness and good faith.

I accordingly should hold that a vessel which had been used by its owner by means of false papers, with false destination, and any such deceitful practices intended to elude the rights of capture by belligerents, to carry contraband goods to the enemy and which has delivered such goods on an outward voyage, remains confiscable upon the return voyage also. What would constitute the return voyage would depend upon all the circumstances of the particular case.

I have stated my view of the law at this stage before considering the effect of the Orders in Council in reference to the provisions of the Declaration of London, by reason of the doctrines as to the force of the Orders in Council which were declared by the Privy Council in the recent case of *The Zamora*¹ (32 *The Times* L. R., 436).

I will deal shortly with these Orders in Council. That of August 20, 1914, affected the voyage of the *Alwina* when it began. That of October 29 came into force while the voyage was still in progress, and the offence in the sense mentioned was continuing. Article 38 of the Declaration said: "A vessel is liable to capture for carrying contraband, but not for having done so." That provision was not ratified. It was modified by the Order in Council of August 20 by the following:

¹ Printed in this Journal for April, 1916, p. 422.

A neutral vessel which succeeded in carrying contraband to the enemy with false papers may be detained for having carried such contraband, if she is encountered before she has completed her return voyage

For this the Order in Council of October 29 substituted the following provisions:

A neutral vessel, with papers indicating a neutral destination, which notwithstanding the destination shown on the papers, proceeds to an enemy port, is liable to capture and condemnation if she is encountered before the end of her next voyage.

If the law was as I have have stated it, those provisions do not operate in extension of it, but, if anything, as a mitigation of the captor's rights. Therefore according to *The Zamora* (supra) they are not invalid. It is not necessary in the present case to decide which is applicable. It is only if the vessel succeeded in carrying contraband to the enemy, in the one case, or if she proceeded to an enemy port in the other, that the penalty on the return or next voyage would attach. For the reasons given, in any view of the present case as the goods were never delivered to the enemy, the vessel was immune when she was captured.

Therefore, an order must be made that the owner of the vessel was entitled to her restitution. By reason of his conduct, however, he must bear and pay the costs and expenses of and incident to these prize proceedings. As it appears that the vessel was delivered up on bail, the form of the judgment will be a declaration of the right to restitution on payment of such costs and expenses, and an order that the bail be released upon such costs and expenses being paid into court.

THE OPHELIA

On May 8, 1916, the Judicial Committee of the Privy Council rendered a judgment affirming the decision of the Prize Court, rendered May 21, 1915, that the German ship *Ophelia*, which had been captured by a British man-of-war, was not constructed, adapted, or used for the special and sole purpose of affording aid and relief to the wounded, sick, and ship-wrecked, and that she was adapted and used as a signalling ship for military purposes, and that she had therefore forfeited protection under The Hague Convention, and, being an enemy ship, must be condemned as lawful prize. (The decision of Sir Samuel Evans in the lower court may be found in *The Times* Law Reports, Vol. 31, p. 452, and this *Journal* for January, 1916, p. 170.)

THE TUBANTIA, THE GELRIA, AND THE HOLLANDIA

British Prize Court

Decided May 22, 1916

(The Times Law Reports, Vol. 32, p. 529)

Contraband goods sent by post are not protected by Article I of the 11th Hague Convention and when seized as prize are liable to condemnation.

In these cases the Procurator-General asked for the condemnation of a large quantity of rubber which was found upon the removal and examination of the mails carried by the three Dutch steamers, as follows: *Tubantia*, 173-½ ibs. of rubber in about 173 parcels, and seven parcels of wool (sample size); *Gelria*, 1,390 parcels of rubber; and *Hollandia*, 1,265 parcels of rubber.

Intercepted correspondence between consignors in Brazil and consigness in Germany referred to an extensive traffic of this kind. One letter from a consignor stated: "Including today's shipment, you have received from me already india-rubber to the selling value of 13,000 marks." Another letter from a Hamburg firm to correspondents in Manaos contained the following:

We have been receiving regularly for some time from Para shipments by parcels of raw rubber, and we would like to draw your attention to this business. These shipments are effected in parcels, as samples without value, by each mail about 200 parcels, each containing about 320 grammes net of raw rubber. The trouble of packing and the high postage expenses are amply compensated for by the good price which can now be obtained here for the goods. Up to the present nothing has been lost. Over there, the price for the article will not be very high, so that if we reckon with the present price here of about 25 marks per kilo [about 10s. per lb.] good profits are possible. The postal authorities, who make a good profit out of the postage, will probably have nothing to say against the dispatch of so many parcels. (And should such be the case, you may easily obtain the permission in Rio de Janeiro which, in a similar case, had already been given once before.)

The shipment would best be effected via Pernambuco, as from there Dutch ships do not call at any English port * * * You ought to take this business into consideration, as, in this manner, you might make your remittances here in goods on which you could further make very good profits.

Held, That the rubber was not exempt as postal correspondence under Article 1 of the 11th Hague Convention, that to attempt to send these parcels as genuine postal correspondence under the convention, was dishonest and that the property was subject to condemnation as contraband.

BOOK REVIEWS

Outlines of International Law. By Charles H. Stockton, Rear-Admiral U. S. N., Retired. New York: Charles Scribner's Sons, 1914. pp. xvii, 616.

The long and faithful service which Admiral Stockton has performed in the field of international law will guarantee to his latest work on the subject a cordial reception by the public. The present volume now supplants his earlier brief Manual of International Law, so well known in naval circles. As delegate to the London Naval Conference and as lecturer during many years at the George Washington University the author has had experience in constructive as well as in didactic work upon the problems of international law. He has not, however, sought to give us a treatise based upon individual research work in all of the many branches of a greatly ramified subject, but has rather chosen to collate from existing works, to rearrange, to present obscure questions in clearer form, to criticize and to comment. The present war has shown more and more that international law is not a fixed code, but that it is composed of certain fundamental principles of justice the application of which to the relations of nations has varied with the circumstances of their mutual intercourse. Too often these principles have been distorted beyond recognition and have been made to serve the interests of one great Power or another which has for the time being dominated the affairs of Europe. Hence it has become a matter of importance to distinguish sharply between those international practices which have obtained temporary recognition by reason of the backing of some great nation and others which have won permanent recognition as embodying the consent of all nations. When international law, as is to be hoped, receives clearer definition after the present war, not a few of the existing rules will be set aside as survivals of an outworn international system.

It is as a general study of underlying principles and larger tendencies in the midst of variations of usage and practice that Admiral Stockton's work will be of special value at the present time, and this feature must excuse the frequent omissions of important details which it would be

serious to omit from a mere text-book. In discussing the laws of war on land, the author is careful to remind us that while the Hague convention upon that subject has been ratified by "practically all of the civilized states of the world" (Italy, Serbia and Turkey being notable exceptions), the regulations are only binding between the contracting parties. It cannot be too often repeated that the Hague code must not be looked upon as a final statement of positive law, but must be read in connection with the customs and usages preceding the year 1899. It is interesting to note that the author frankly recognizes that certain articles (Art. 18 and the last clause of Art. 60) of Lieber's code have become obsolete. The same might have been said of Art. 26 of the code (quoted p. 301) and of Art. 36 of the code, judged by Arts. 45 and 56 of the Hague convention. The small protection furnished by some of the rules of the Hague convention appears when the author points out (p. 314) that in view of the many ways in which the property of individual citizens may be taken over by a hostile military occupant. the so-called exemption of private property on land from capture "may be called almost nominal."

If in the hurry of preparing the work for publication in the opening months of the war the author has fallen into an occasional loose construction of sentences and has indulged in a superfluity of quotations (his own works, previously published, being quoted where they might have been paraphrased), the general public will readily overlook such minor defects in consideration of the service which has been rendered it in placing at its disposal during these critical times a treatise which is at once readable in form and authoritative in content.

C. G. Fenwick.

The Diplomacy of the War of 1914. The Beginnings of the war. By Ellery C. Stowell, Assistant Professor of International Law, Columbia University. Boston and New York: Houghton Mifflin Company. 1915. pp. xxi, 728.

It was wittily said of the Spanish-American War by one who has written one of the most successful books in regard to the present war, that "books have been many where battles have been few." Certainly battles have not been few in this the greatest war in history, but books have indeed been many and of many types. One of the commonest types has been a hastily done, hop, skip and jump through the diplomatic correspondence leading up to the war, as published by the various

governments, with a view to marshalling the most striking evidence favoring the beligerent whose cause the author believes to be just. Such a book, if well written, is pretty sure to find a numerous and admiring audience on one side or the other; but it has, of course, little value except as a campaign document. This is emphatically not the sort of book Professor Stowell has written. On the contrary, he has faithfully, intelligently and fairly analyzed the entire published diplomatic correspondence, with a view to finding out exactly what it shows with respect to the origin of the war, and presenting his results in a way to be readily intelligible to the average reader.

The correspondence does not deal altogether for either side, and Professor Stowell has not failed to point this out. The documents are not altogether clear on a number of points, and Professor Stowell has frankly said so, and at every step he has referred to and quoted the passages upon which he bases his statements, and has rendered it not only possible but easy for the reader to form his own conclusions. Moreover, he has not confined his references to the documents themselves, but has also made appropriate reference, upon important points, to the many official and unofficial commentaries on the documents, thus giving the reader the opportunity to compare the opinions of other writers with his own.

The volume is divided into three parts and an appendix. The first part is taken up with a brief but clear and readable outline of the diplomatic history of Europe since the Congress of Vienna and a sketch of the general diplomatic situation at the time of the assassination at Serajevo. Part two, the body of the work, is devoted to a detailed analysis of the diplomatic correspondence immediately preceding the war as published by the various governments. Part three, reproduces the text of many of the important documents referred to, aside from the diplomatic correspondence itself which the author has forborne to reprint on the ground that these documents have been made accessible in so many ways as to render their reproduction unnecessary.

The work, although invaluable to the specialist who is making a study of the documentary history of the diplomacy of the war, is intended for the general reader, and in order to make it more useful to him, a chapter of questions and answers is included in part three, in which a number of the questions in regard to the war, which have been most mooted, have been specifically asked and answered. The nature of these questions may be gathered from the following examples:

Did France violate or intend to violate Belgium's neutrality? Was the German Emperor personally responsible for the war? Did Russia mobilize in such a fashion as to necessitate action by Germany? etc.

A convenient mechanical feature of the work is the use of "modified quotations" in quoting from the various documents; a method which, while retaining the substance and for all practical purposes the language of the original, allows the quotation to be easily worked into the general framework of the text.

A most interesting and valuable chapter sums up the author's conclusions as to the causes of the war. In a word, he finds that the countries responsible for the outbreak of the war were, "first, Austria; second, Germany, and in some slight degree Russia," (p. 491) and since it would not be unjust "to lay at the door of Germany the causes of whatever action was taken on the part of Russia and Austria to bring on the war," the author reaches the conclusion that "Germany stands primarily responsible for the outbreak of the war" (p. 492).

It is, of course, impossible, within the limits of this review, to enter into any detailed discussion of these conclusions, with which the reviewer is generally in accord. It is suggested, however, that perhaps Professor Stowell does not sufficiently stress (p. 481) the duty which it is submitted lay upon Serbia, to have promptly instituted an energetic and bona fide investigation of the assassinations at Serajevo. And again it is submitted that possibly not sufficient weight is given to the German argument of Russian culpability growing out of the premature Russian mobilization. This argument has been very strongly put by Dr. Helfferich and if we apply what is sometimes called in our municipal law "the doctrine of the last chance," in determining the proximate cause of the war, Dr. Helfferich's argument has considerable force.

Up to the time of the Russian general mobilization, as it seems to the reviewer, Germany and Austria were wrong at every point. On the face of the correspondence, the Russian general mobilization appears to have been premature and to have been entered upon with full knowledge that Germany, acting on the doctrine that Russia had the numbers and Germany had the speed, would regard Russian mobilization as the signal for immediate general mobilization and war. The reviewer cannot but feel that Russia, of all the Entente Powers, while not the aggressor, signally failed, to use another expression from our municipal law, "to retreat to the wall" before resorting to arms.

It is unlikely that any two persons would be in exact agreement as to the emphasis which should be placed on each of the many acts contributing to bring about the great tragedy. But Professor Stowell takes the utmost pains on this point of Russian mobilization, as on all other points, to place the reader in possession of not only the exact facts but of the various arguments which have been made on the facts. Dr. Helfferich's able argument, for instance, is fully stated (p. 165, note) and Professor Stowell is careful not to fall into the common error to which both the French Yellow Book and English White Paper lend support, that Austrian general mobilization preceded Russian general mobilization. See pages 165, 183, 185, 186, 192, 491, 492, 522, etc.

Professor Stowell guards his conclusions that Germany was primarily responsibile for the outbreak of the war with the following very judicious qualification:

I do not wish to be misunderstood as thinking that Germany really wished for war; but by her conduct she gave evidence that she intended to back up her ally to secure a diplomatic triumph and the subjugation of her neighbor, which would greatly have strengthened Teutonic influence in the Balkans. She risked the peace of Europe in a campaign after prestige (p. 485).

Passing the point of Germany's primary responsibility, Professor Stowell seeks to investigate the question as to "who decided upon the various steps which determined her action" (p. 492). He finds, it would seem rightly, that "the search for any personal responsibility for the war will * * * prove unavailing," (p. 492) and concludes that "the real cause of the action of the German Government was a result of the state of mind of the nation," the Bismarckian building up of a "Realpolitik—that is to say, a policy of dealing with concrete conditions as they are, as opposed to the following of ideals; but in the minds of many it means the justification of whatever succeeds" (p. 494).

Germany and the German race needed and demanded their "place in the sun." Germany declined the expedient of emigration for her people to other countries or the voluntary restriction of her population, in other words, race suicide (p. 506). In the language of the author:

She preferred the third solution, which was to make an appeal to her teeming millions to hack their way to a larger place in the world. She was not deterred by the fact that she must rend the prize from the grasp of another state, whose philosophy of race-suicide she considered merited such a fate.

Having decided for this fuller life, even at the cost of the world-condemnation which would follow her aggressive attempts to seize the territory of others, she attempted

to secure the results through threats of force without its actual employment. She played for a diplomatic victory over Servia and so on beyond the Balkans into Asia Minor.

If England and France could have been sure that once Germany had expanded over these regions she would subscribe to their own philosophy of the status quo and not take advantage of this increase in strength to make it a fulcrum for a further advance, they could, doubtless, have reached some agreement with her, but each side mistrusting the other's purpose, it was most difficult to reach any compromise. Germany, impatient and apprehensive of delay, said, "I will expand, even at the cost of aggression. If need be I will seek my 'place in the sun' at the point of the sword." To this the Anglo-French super-empire; defending the status quo, replied, "Thou shalt not expand until thou puttest aggression behind thee." The issue is being fought out.

The question may be fairly asked whether or not such a serious and elaborate study of the diplomacy of the war as was involved in Professor Stowell's work was worth while at the time when it was undertaken, when, as everyone admits, the documents which have been published by the various governments are by no means complete and so much remains to be learned from the secret archives and personal memoirs. etc. As to the real facts of the negotiations, it seems to the reviewer that this question should be emphatically answered in the affirmative. This is the greatest war in history; if it is worth while to discuss at this time the diplomatic correspondence gotten out by the various governments at all (and even those who in theory appear to maintain that it is not are compelled to discuss them, if only in order to show their alleged worthlessness), it is worth while to discuss them in a careful and scientific spirit. It is true that the documents at present are only partially available, but no one can tell how many years it will be before this situation will be remedied. As Professor Stowell points out in his preface, "it was years after the Franco-Prussian War before the world learned the truth in regard to Bismarck's diplomacy during the formative period of the German Empire." And, moreover, it is upon the facts as they appear, not as they really are, that individual and governmental action must now be taken. Neither men nor nations can wait for the posthumous journals of statesmen and the doctor's thesis of the illimitable future to find out what their attitude should be during the greatest conflict of history, in the midst of which they are living and must act.

Professor Stowell has rendered every serious student of the causes of the war his debtor.

WILLIAM CULLEN DENNIS.

Wheaton's Elements of International Law. 5th English Ed., revised, enlarged, and re-written by Coleman Phillipson, London, Stevens and Sons: New York, Baker, Voorhis and Company, 1916, pp. xliv, 901.

Dr. Phillipson has made numerous contributions to international law, one of the best known being *International Law and Custom of Ancient Greece and Rome*. This new edition of Wheaton is another recognition of the great service which Wheaton rendered international law in his first edition eighty years ago.

This new edition contains an introduction by Sir Frederick Pollock in which, writing in the Christmas vacation of 1915, he allows himself to say that it is the fixed belief of the German leaders that, "Germany has rights in virtue of a paramount mission to Prussianize the world. Germany's allies have rights because they are her allies. Neutrals have just what Germany chooses to allow them, and enemies have none." Later, however, he adds, "But on reflection it seems that, when great Powers commit themselves to principles of anarchic tyranny, that is the very reason why those who still believe in the rule of law should reassert and republish their faith as the most dignified form of protest, and in the long run not the least effectual" (p. xl.).

The plan of this fifth edition follows for the most part the arrangement of earlier editions of Wheaton. No indication is given as to what are the actual words of Wheaton and what are the words of Dr. Phillipson. Perhaps, however, clearness would have been gained in certain fundamental concepts by following Wheaton's words, as in Chapter II, Part I when Wheaton says, "The subjects of international law are separate political societies of men living independently of each other, and especially those called Sovereign States." Instead Dr. Phillipson says, "The peculiar subjects of international law are nations, and those political societies of men called states." (p. 32.) Later in the same chapter, after discussing "nation" and "state," Dr. Phillipson says, "But the peculiar objects of international law are those direct relations which exist between nations and states; that is, the subjects of international law are, properly speaking, only states,—for they alone are vested with international personality." (p. 34.) In the statement and discussion of what has come to be called the Monroe Doctrine, the reader would be enlightened if it had been made clear that the paragraph preceding the discussion was Wheaton's own opinion upon a pronouncement by one of his contemporaries (p. 97).

One misses some of the latest British contentions upon the matter of what constitutes evidence of nationality, though there are late cases relating to trading with the enemy.

It is, however, refreshing to have references to early writers such as Grotius, Pufendorf, Bynkershoeck, etc., liberally used. Of course, it is not possible to find support for some modern principles in the early writers because the conditions of the seventeenth and eighteenth centuries had not given rise to the problems of later days.

The Hague conventions are generally followed as embodying international law. In comparing these with the German *Kriegsbrauch* it would have been helpful in some instances to insert regulations of other states upon the same subjects.

This book, like any issued in the time of war, and in a belligerent country where many questions are still undecided, omits some of the considerations which will influence the ultimate adjustment of differences. The editor frankly admits that some of these recent precedents cannot "yet be considered as part of international law," and of course the reports of even the best newspapers cannot serve for more than an indication of the opinion of the day which may need modification when more complete information is available.

In treating of warfare on land there are many references to the methods pursued by the Germans in the present war.

Referring to the German complaints as to the use of the Turcos and Indian troops, Dr. Phillipson says, "However, whatever may be said about 'savage' and 'barbarian' troops, the war of 1914 showed that the worst excesses of cannibals and scalp-hunting savages seem less atrocious than the many unspeakable crimes perpetrated by German soldiers' (p. 476). Later is the statement, "In the case of prisoners who have expressly undertaken not to escape, the German Manual allows the death penalty for a breach of parole." The reader should not infer that the regulations of other states do not contain the same provision.

Dr. Phillipson (p. 482) says "The German Manual goes further and allows the seizure of all persons whose liberty may be a source of danger to the opposing belligerent, e. g., influential journalists, political personages, priests who might rouse the population. This practice which was adopted by the Germans in Belgium and France during the Great War, is unjustifiable; not only did they arrest the persons indicated, they also seized large numbers of leading citizens and transported them to Germany." The practice may, however, also be supported by the

British rule upon the same subject which provides that "the following are liable to be made prisoners: All persons who being at liberty may be harmful to the opposing state, such as prominent and influential political leaders, journalists, local authorities, clergymen, and teachers, in case they incite the population to resistance." This may be an unjustifiable rule of war, but it is fair to acknowledge that it is a rule which appears in the same words in various codes.

Doubtless the plea of "military necessity" has been advanced in the present war without good ground, as Dr. Phillipson states. Both parties to the contest seem to have found it a convenient excuse not merely to support action against each other, but also toward neutrals. No support in law can be found for many of these acts, as Dr. Phillipson proves.

In the chapters relating to neutrality, one wishes that Dr. Phillipson had given a somewhat fuller exposition of certain important topics, e. g., the present British doctrines of contraband and of blockade. In speaking of The Hague convention of 1907 respecting postal correspondence he asserts, however, that "the possibility of arbitrary treatment that existed before the convention was made was not altogether removed by it." American readers would have appreciated more discussion in regard to armed private vessels and the destruction of prizes.

It is convenient, as in this edition of Wheaton, to have the dates given with reference to cases, particularly when there are two or more cases having the same name.

On p. 401 it seems to be implied that the Chamizal arbitration was among those settled at The Hague.

It seems hardly correct to say "But he [the President of the United States] has no power to enlarge the boundaries of the Union—which can be done only by Congress, the treaty-making power" (p. 521).

Appendices contain, Foreign Enlistment Acts, Prize Court Acts, Treaty of Washington 1871, and the Anglo-French Agreement (1904), and are followed by a good index.

It is doubtful whether the plan which omits distinguishing marks indicating what portion of the text is actually in Wheaton's own words is satisfactory even if, as Dr. Phillipson says, he "ought perhaps to be regarded as a co-author of this edition of the book, rather than as an editor in the usual sense of the term." Readers will join in the hope expressed by Sir Frederick Pollock in the introduction "that Dr. Phillipson may live to put forth another edition of this book, which will

exhibit the custom and ordinance of civilized nations at last clothed with fitting authority, and armed with power to assure the harmony of the world."

GEORGE GRAFTON WILSON.

A Treatise on the Conflict of Laws. Vol. I.—Part I. By Joseph Henry Beale, Professor of Law in Harvard University. Cambridge: Harvard University Press, 1916. pp. lxxx, 189.

The book, of which the above is only a part of the first volume, promises to be indeed a monumental work on the Conflict of Laws, if one may judge from the care and thoroughness with which the introductory matter contained in this initial publication has been set forth.

The author himself explains in the preface his reasons for publishing this small fragment of his work in advance. He says:

In publishing this small portion of the treatise on the Conflict of Laws which he hopes eventually to finish, the author is not offering it as a complete piece of work, either in quantity or in quality. To finish the work as planned would be a labor of many years; to master, to think through, and to express one's thoughts on the topics herein discussed is not to be accomplished at the first essay. By publishing these few pages now the author hopes to benefit by helpful criticism, by further study and by more matured thought, and especially by that ocular demonstration of faulty thought and inept expression which seeing one's thought in print alone can give. Other parts are intended to follow from time to time; and when at last the work is complete, it will, it is hoped, include this part in a much improved form.

The first chapter of the text is preceded by a general bibliography of the subject, in the compilation of which the author has shown the painstaking thoroughness and accuracy of his scholarship. He has even given the reader the benefit of his advice and suggestions in recommending the books on this subject which should be contained in a well appointed public or private law library. For a public library his list includes about 125 volumes, and for a private one about 65.

Within the scope of this review it is not possible to give the complete list of writers on the Conflict of Laws discussed in this bibliography. But as evidence of its completeness it may be stated that he devotes to these authors of various schools and nationalities about 60 pages, as follows: to the early Italian school nearly two pages; to the early French school nearly two pages; to the early School of The Netherlands one page; to the early German writers one page; to the English and American authors eight pages; to the more modern French authors eleven pages;

to the German eleven pages; to the Dutch two pages; to the Italian six pages; to the Spanish and Portuguese (including Ibero-Americans) eight pages; and to authors of other nationalities two pages. Eight more pages are devoted to articles, periodicals and collections of cases dealing with the Conflict of Laws.

In view of the fact that so far no part of the work has been published except what might be called the introductory matter, perhaps the most interesting single paragraph is to be found in section 10 of Chapter I, where his method of treating the whole subject is briefly outlined by the author. To quote:

"The method of treating the subject * * * will be as follows:

After an introduction, dealing with the nature, history and bibliography of the subject, the general nature of law, of legal rights and of jurisdiction will be considered. This will be followed by a detailed theoretical study of legal rights, in which an attempt will be made to establish the time and place in which legal rights come into existence, the legal effect of acts, and the limits of merely remedial action. As a result of this study, a theoretical conclusion will be reached as to the law by which these rights, acts and remedies should be governed. The remainder of the work will be devoted to a careful study of the positive common law of England and America. The analysis and arrangement of the law adopted in the theoretical study will be followed in this practical part.

The first portion of this program has now been accomplished in the publication of the volume before us. There remain to be published the "detailed theoretical study of legal rights, in which an attempt will be made to establish the time and place in which legal rights come into existence, the legal effect of acts, and the limits of merely remedial action," as well as the "study of the positive common law of England and America."

In his third chapter our author discusses interestingly "the three principal systems of thought now current" touching the Conflict of Laws.

"The first of these," says he, "supposes two independent laws, effective at the same time and place, and subject to a possible choice between them. The second supposes a single set of principles, binding on all nations, by which the need of any choice between two independent laws is prevented. The third asserts that no law can exist as such except the law of the land; but that it is a principle of every civilized law that vested rights shall be protected, and that therefore in each country it is sought to find what rights have arisen anywhere, and to recognize them,

applying in all else the law of the land to every question. These systems may for convenience be called respectively statutory, international and territorial."

In discussing the first of these, the author considers the two prevailing theories touching the proper law to govern personal relations, *i. e.*, the theory of domicil and the theory of nationality, respectively, and comes to the conclusion that, whatever might be the most appropriate theory for the consolidated empires or republics of Europe, it is necessary that the federalized states of Great Britain and America cling to the domicil as furnishing the law to control such matters. How would it be possible, he suggests, for a citizen of New York or of Scotland to invoke the law of nationality with regard to the status of legitimation or infancy, when the national law of the United States or Great Britain does not deal with those subjects at all, but leaves them entirely to the control of the States or units of empire?

His consideration of the respective merits of nationality and domicil as the basis of a personal law leads our author further to the discussion of the doctrine of the *renvoi* which he sets forth very lucidly in the following language:

Wherever the statutory theory is accepted, and the laws of the two states concerned differ as to whether the law of the nation or the law of the domicil shall be applied, a troublesome doubt appears. Where the law of the forum provides that a juridical event shall be governed by a certain foreign law, and that law in turn remits (renvoie) it to the law of the forum to determine by its law, the situation arises which has been termed the renvoi; and this situation has proved puzzling to courts and authors. Suppose, for instance, that a foreigner domiciled in France dies, leaving a will; by the law of his country testamentary capacity is determined by the law of his domicil, by the law of France such capacity is determined by the law of his own country. France sends the question to the law of his country; that law remits it to the law of France, his domicil; and so the question is absorbed into an apparently endless circle.

Three courses are open to the law of the forum:

- 1. To refuse the *renvoi*, remit the case in turn to the foreign law, and thus engage in a perpetual deadlock.
- 2. To accept the *renvoi* and decide the question in accordance with the terms of its own law, on the ground that the attempt to settle it in accordance with the foreign law has failed.
- 3. To disregard the *renvoi* and decide the question in accordance with the terms of the foreign law, on the ground that the foreign substantive law alone concerns the question, and there is no submission of the foreign doctrines as to the Conflict of Laws.

The second course has its supporters; but on the whole the partisans of the third course prevail.

In treating of the application of the *renvoi* doctrine in the American courts, our author has this to say:

We may be the less troubled about the finer points of this discussion because the territorial theory of the Conflict of Laws, which is accepted by the American courts, has no room for any doctrine of *renvoi*. If an American court, having according to the territorial theory to apply its own law to existing rights, finds that a right has, by its law, arisen under another law, it has only to learn the terms of that law and the nature of the right which it created; if, on the other hand, it is a question of a new right, created by the law of the forum, but the latter law in creating the right acts in accordance with the provisions of some foreign law, as for instance the law of a foreign domicil, again it has only to learn the terms of that particular foreign law and apply it. In no case is the court concerned with the views of any foreign court on a question of the Conflict of Laws.

This statement seems to the reviewer a proposition which is open to some doubt. Probably the author had in mind only the particular point under discussion,—the *renvoi* as it applies to the divergence between the law of nationality, and the law of domicil. But is it not possible with regard to other matters that the *renvoi*, or at least a doctrine closely analogous thereto, might arise in the American courts?

For instance, a Virginia statute enacts that "upon a contract which was made and was to be performed in another state or country by a person who then resided therein no action shall be maintained after the right of action thereon is barred by the laws of such state or country." (Va. Code, § 2933.)

If we suppose a contract made and to be performed in New York by a person then resident therein, and an action to be brought thereon in Virginia, and if we further suppose that by the New York decisions the time within which an action on such a contract is to be brought shall be governed by the law of the forum (Virginia) and not by the law of the place of the contract (New York), it might be argued with some plausibility that, under the Virginia statute above quoted, there would arise the doctrine of the *renvoi*. At least this will serve to show the possibility of the application of the *renvoi*, or an analogous doctrine, in the American courts.

In conclusion it may be said that this little portion of his work will give Professor Beale's readers a strong appetite for more. They will at once realize that herein lies the promise of a work on a difficult though fascinating subject, which will advance us far on the road to a scientific treatment of the many intricate problems it presents.

It is to be earnestly hoped that Professor Beale will soon find the time to complete his work so well begun, and that when finished it will justify the strong hopes of his present readers as well as his own.

RALEIGH C. MINOR.

Andreas Fricius Modrevius. Ein Beitrag zur Geschichte der Staats- und Völkerrechts theorien. By Wladislaus Maliniak. Vienna: 1913. pp. 200.

This is a doctor's dissertation of rather more than usual importance, inasmuch as it exploits a field which seems to be almost wholly virgin soil even in Germany, viz. the Polish political literature of the fifteenth and sixteenth centuries.

It appears that the subject of the thesis, a Polish nobleman, usually referred to as Fricius, was born about 1503. Having imbibed the humanistic spirit at the University of Cracow, he settled down as notary in Posen in 1525, and soon became a follower of Laski, one of the leading Polish statesmen of the day. Later he studied theology in Germany and formed a close connection with Melancthon.

In 1540 Fricius was appointed a royal secretary at Cracow, and soon after began his career as a publicist, interspersed with various diplomatic missions, the most important of which was that of secretary to the Polish delegation at the Council of Trent. Drawn more and more into the current of the Reformation, he developed great activity as a writer on legal, political, and theological subjects.

His magnum opum was a commentary in several volumes entitled De emendanda republica published during the years 1554-59. This work, which seems to be filled largely with commonplaces drawn mainly from Aristotle and Cicero, apparently contains little that is novel or particularly important to the student of political theories, though it is doubtless of some historical and scholastic interest.

Nor do the views of Fricius on the nature, origin, and aims of the state, the various forms of government, etc., commend themselves as especially advanced or enlightened for his time. He favored an aristocratic form of government and was a strong advocate of the rights of the privileged classes, more especially of the landed nobility.

It is as a Polish peace advocate of the sixteenth century that the views and attitude of the subject of our author's thesis deserve most consideration, at least by students of international relations.

In striking contrast to his great Italian contemporary, Machiaevelli,

Fricius was a strong pacifist. He deprecated all wars except for defence, holding them to be at once unworthy and unpolitical. He advocated arbitration as the best means of settling disputes between sovereign states, and in this connection Fricius appears to have made a unique contribution to political theory. He suggested that sovereignty subsists in the freedom of arbitral judges. Manifestly if all states were equally and reciprocally bound by judicial decisions based upon treaties or courts of arbitration, their freedom or sovereignty and equality of legal rights would be at least theoretically preserved.¹

Of the importance of international law as a necessary basis for arbitral decision, Fricius seems to have had no conception. In common with the publicists of his time, he evidently regarded the *jus gentium* as based upon a natural law which is to be directly applied by statesmen and judges in the conduct of international relations.

Fricius should also be credited with great and (for his time) somewhat exceptional humanity in his views on the conduct of warfare and the treatment of the conquered. He condemns pillage in the most emphatic terms, though he urges the stern punishment of those who have been guilty of bringing on an unrighteous war.

Amos S. Hershey.

Early Diplomatic Relations Between the United States and Mexico. By William R. Manning. Baltimore: The Johns Hopkins Press. 1916. pp. ix, 406.

This valuable volume, published as one of the series of Albert Shaw Lectures on Diplomatic History, covers the period of Mexican-American relations from 1821 to 1830 which has never before been adequately—a period which might have been used to establish friendly relations, but which was wasted in quibblings and misunderstandings. In the latter the author finds the origin and largely the explanation of the growing and apparently irreconcilable differences of the next two decades, and the discord of half a century.

Parts of four or five chapters have previously appeared in various standard periodical publications. Chapter I supplements the detailed treatment of the policy of the United States found in Paxson, and the

¹ The reviewer assumes the responsibility for the argument by which the suggestion of Fricius is supported. The author of the thesis does not seem to have realized the importance of the suggestion (see page 167).

chapter on Cuba supplements the earlier accounts of Callahan and Chadwick.

The history is presented in ten chapters: Beginnings and early Mexican representations at Washington; Tardy appointment and cool reception of the first United States Minister to Mexico; British influence in Mexico and Poinsett's struggle against it; Cuba saved to Spain; Diplomacy concerning the opening of the Santa Fé trail; Denunciation of Poinsett because of his relations with the York Masons; Obstacles in the way of concluding a commercial treaty; Commercial controversies; Texas and the boundary issue; Public attacks on Poinsett and his recall. The chapters on Cuba (77 pages) and the boundary issue (72 pages) are disproportionately long.

An additional chapter presents comments on authorities. The author has obtained his materials largely from official manuscript sources of the State Department at Washington and of the Ministry of Foreign Relations in Mexico. He has also drawn from the Van Buren manuscripts in the Library of Congress at Washington much material on the beginnings of Jackson's and Van Buren's plan for the purchase of Texas in 1829. He has also made a careful study of the public documents and many secondary sources. The chief authorities are cited in the footnotes, which add much to the value of the book.

The real beginning of the Mexican legation dates from the arrival (November, 1824) of Obregon, the fourth minister plenipotentiary appointed by Mexico. The appointment of an American representative to Mexico was used as a political football or political pawn at Washington while Canning was busy establishing a British influence which overshadowed the importance and influence of the earlier American recognition of Mexican independence and the declarations of Monroe. Joel R. Poinsett, who accepted the appointment, previously declined by others, received his instructions on March 8, 1825. To recover the prestige lost by delay, and with a desire to preserve republican institutions in Mexico and prevent encroachment of European Powers, he used means which subjected him to charges of interference in internal affairs and produced increasing distrust and suspicion, which postponed the satisfactory conclusion of pending negotiations, endangered peaceful relations, and finally led to public Mexican attacks which resulted in In Clay's instructions to show an unobtrusive readiness to explain to the Mexican Government the working of the American Constitution, which had been so largely copied by Mexico, Poinsett

found his only excuse for his activities (through the York rite Masons) which gave rise to the charge of meddling in internal affairs. At the same time he corrected the implication of Alaman (the Mexican Minister) that the declaration of Monroe gave Mexico the right to demand that the United States interfere in behalf of the new American states.

In his longest chapter, the author traces the negotiations in regard to the serious international question of the destiny of Cuba, in which seven nations were involved, and in which the United States, while opposing the acquisition of the island by any European Power or by Mexico or Colombia, declined to be drawn into a self-denying pledge.

In Chapter V he treats the growing intercourse along the Santa Fé trail on the far northern frontier, after 1821, the substitution of wagon trains for pack animals in 1824, the measures to establish and protect the trade, the efforts to secure the coöperation of Mexico in constructing the road, which she opposed until the question of boundary line should be settled, and the military escort furnished by the United States before the regulation of trade by the treaty of 1831.

The two most valuable chapters in the book are those relating to the negotiation of treaties of commerce and boundaries. For over four years the negotiations for a commercial treaty were fruitless, and in this period Mexico twice allowed the time for exchanging ratifications to pass without action. The chief initial obstacles, after the agreement to separate the question of commerce from that of boundaries, were the attempt of the United States to modify the most favored nation clause by a new principle of "perfect reciprocity" of tonnage dues, which was opposed by Mexico, and the demand of Mexico for an exception in favor of the new Spanish American states on the ground that they were engaged in a common contest against Spain in which the United States was not participating. In reply to the latter, Clay and Poinsett urged that the United States by maintaining neutrality had prevented the precipitation of a detrimental union of European Powers against Americans, and thus had been enabled to render assistance more valuable than military cooperation. Poinsett successfully made the omission of the exception a sine qua non and yielded on the proposed "perfect reciprocity." He also withdrew an anti-British exception which he had proposed to the principle of "free ships make free goods."

The treaty was signed on July 10, 1826, and, on its arrival at Washington, still not ratified by Mexico, was promptly ratified (February 26) by the Senate, after the insertion of Poinsett's proposed exception and

also the omission of an article excluding from Mexico all European Spaniards who had been naturalized in the United States since 1820, which was declared to be repugnant to the United States Constitution. Mexico still delayed to act, first objecting to the clause on the rendition of fugitive slaves, and later demanding an article settling the boundary dispute. Finally, after the hasty conclusion of a boundary treaty on January 12, 1828, followed by the quick settlement of disputed points, Poinsett obtained a new treaty (on February 14) which secured both the principle of "perfect reciprocity" and the exception to the principle of "free ships make free goods," and also provided for the return of fugitive slaves. This treaty, ratified by the American Senate on May 1, 1828, failed in the Mexican Congress. Finally, however, over a year after the growing opposition of Poinsett had burst into a demand which resulted in his removal, Anthony Butler (on April 5, 1831) secured a treaty which was ratified and properly exchanged by both Powers, and which contained practically all the articles of the Poinsett treaty except the clause providing for return of fugitive slaves.

The commercial controversies, which in the absence of treaty regulations, continually arose over the rights and privileges of United States merchants and merchandise, and which occupied most of Poinsett's time in vain attempts to adjust, are treated by the author in a separate chapter. They relate to requirements of consular certificates to invoice of goods and resulting seizures of vessels and goods, unfair tariff charges, seizure of American vessels and cargoes on various pretexts, the conduct of Mexican naval vessels and Mexican privateers against the commerce of Spain (and their use of United States ports) and losses to merchants and travellers at the hands of robbers and bandits.

The long chapter on "Texas and the Boundary Issue" traces the questions relating to the American desire to regain territory bartered away in 1819, the early suspicions of the authorities of the new state of Mexico, the proposals of the American Government to secure a new and more advantageous boundary west of the Sabine to guard against possible future difficulty, the hope of the Mexican ministry to secure the extreme limits of Spanish claims before the treaty of 1819, the beginning of the Anglo-American independence movement in Texas, the American attempts to purchase the territory in which American citizens had obtained extensive grants from Mexico, the hasty negotiations of the boundary treaty of January 12, 1828, which was promptly ratified by the United States but was ratified too late by Mexico to be exchanged

under the time limit, the rise of new internal questions relating to Texas, and the unsuccessful negotiations by the Jackson administration to secure a new treaty of limits. Poinsett, shortly before his recall, was convinced that the American boundary could not be extended west of the Sabine without driving Mexico "to court a more strict alliance with some European Power." Finally, after Mexico by firm but pacific protests, had been induced to ratify the pending treaty of commerce, the American Government (according to promise) submitted with it, to the United States Senate, the pending treaty of limits, which was thus revived after its obligatory character had been lost by the remissness of Mexico. Ratifications were exchanged exactly one year later, on the last day allowed under the treaty provision.

J. M. CALLAHAN.

Grundzüge des Englisch-Amerikanischen Privat-und Prozessrechts, besonders im Vergleiche mit den Systemen des europäischen Kontinents. By Arthur K. Kuhn, Zurich: Art. Institut Orell Füssli. 1915. pp. xii, 254.

The present volume is the result of lectures on Anglo-American law given by the author at the University of Zurich during the summer semester of 1914. Part I gives a brief history of the origin and development of the common law in England and the United States. Part II deals with the principal characteristics of the English and American constitutions as regards their influences upon private law, and with the organization and jurisdiction of courts. In Part III the author sketches the law of Procedure from the pleadings at law and in equity to the execution of judgments, and outlines the subjects of Evidence and of Preliminary and Extraordinary Legal Remedies. Parts IV and V are devoted to the subject of Private Law, being entitled, in accordance with the customary classification in Continental countries, "Civil" and "Commercial" Law, respectively. Under the former title our author takes up the law of Persons, Domestic Relations, Real and Personal Property, Obligations (Contracts, Sales, Agency, Suretyship, Bailments, Partnership, Torts and Quasi-Contracts) and Wills and Administration. Under the heading of Commercial Law the subject of Bills and Notes and Checks, Corporations and Carriers are treated.

The main interest of the work to students of law in this country consists in the comparisons which are drawn on every hand between Anglo-American institutions and those of Continental countries. Our author's

familiarity with both legal systems, acquired through a long study in this country and abroad, qualified him preëminently to undertake this delicate task. The execution of the general plan of work is done with skill, ability and judgment. The presentation of the subject is characterized by clarity and force. A fine sense of proportion is maintained throughout the work. To the Continental student, Kuhn's Outline will serve as an illuminating introduction to Anglo-American law. In the Continental literature it will fill a long-felt need.

ERNEST G. LORENZEN.

Treaties, Their Making and Enforcement. 2d ed. By Samuel B. Crandall. Washington: John Byrne & Co. 1916. pp. xxxii, 663.

It is said that every lawyer owes to his profession the debt of writing a book on the subject with which he is most familiar. If that be so, Mr. Crandall has paid doubly his debt. His second edition of Treaties, their Making and Enforcement, makes its appearance at an opportune moment, for while this may not be an era of making treaties, it is certainly one when their enforcement is a consummation most devoutly to be desired. The more that the making and enforcement of treaties is studied and made the subject not only of text books, but of courses in law schools and universities, the less chance there will be of those farreaching instruments being regarded as "scraps of paper" by courts or by statesmen. Mr. Crandall has treated the subject broadly and has not confined himself to treaties to which the United States is a signatory, but has gathered between the two covers of his book much useful information conveniently arranged and exhaustively indexed relating to treaties made, construed and enforced by, and in, other jurisdictions.

In regard to treaties with the United States, he calls attention, as must every one who discusses the subject, to the still unsettled controversy that has existed for over a century between the Senate and the House of Representatives regarding the effect of a treaty between a foreign Power and the United States, negotiated by the Executive and confirmed by the Senate, but requiring affirmative action to put it into effect. In 1902, while the Cuban Sugar Treaty was being discussed, a Senator in a speech in the Senate insisted that a treaty containing a provision for a specified reduction of the tariff on a specified article was self-enforcing and needed no further action by Congress. The writer was asked by a member of the House of Representatives where the latter could find material to use in reply, and the writer advised him

to find the speech which the same Senator had made several years before when he was a member of the House and naturally took the other side of the question.

So long as the Constitution equally provides that treaties and acts of Congress are the supreme law of the land, the clashing of the two will not only be constant, but will correspond very much to the meeting of an irresistible force with an immovable body. Fortunately, up to the present time, the two branches of the legislative body of the government have met the question on every occasion that it has arisen in a spirit of patriotism and accommodation; and while no definite conclusion has ever been reached, there have been expressions of accord and agreement, notably the statement incorporated in the act appropriating for the payment of Alaska to the effect that under some circumstances treaty stipulations cannot be put into effect except by legislation to which the consent of both houses is necessary. Mr. Crandall's chapter on treaties involving modification of the revenue laws throws much light on this phase of treaty making and enforcement.

The appendices, tables of cases, and compendium of decisions are admirably made up and are invaluable not only to the student interested in the subject, but also to every lawyer whose case may have its origin in a right based on treaty stipulations.

After the war in Europe is over—and may that be soon—someone will have another opportunity to write on the effect of treaties in, and their modification by war; and surely no one will be better able to do it than Mr. Crandall.

CHARLES HENRY BUTLER.

Der Streitfall zwischen Schweden und Norwegen. By Dr. Karl Strupp. Leipzig: Duncken and Humblot. 1914. pp. 92 and map.

This monograph is a reprint from the second volume of Professor Schucking's great compilation, Das Werk vom Haag. It is a study of the maritime frontier controversy between Sweden and Norway and of the arbitral award of the Hague Court dated October 23, 1909. A peculiar difficulty confronted the author in this, that the governments involved declined to permit an examination of the pleadings filed with the arbitral court; and he expresses the very pertinent hope that in the future some way may be found to obviate such an obstacle to purely scientific legal study. With the same painstaking marshalling of authorities and examination of precedents as characterize the other writ-

ings of this distinguished young scholar, he has presented a readable exposition of this international litigation.

The subject is treated under five principal heads: an account of the available material and authorities, the history of the controversy, the proceedings before the Hague Court, the arbitral judgment, a criticism of the judgment.

The author takes exception to the form of the judgment and we would heartily second him. Following the form of the French judicial arret, this award contains eleven pages of "whereases" (as reproduced in Wilson's "The Hague Arbitration Cases"), preceding a judgment of seventeen lines. Only a specialist can easily find his way through such a recital, which commingles statements of claims, findings of fact, conclusions of law, and judicial argumentation. The admirable judgment of November 11, 1912, in the case between Russia and Turkey, concerning the arrears of interest on indemnities, with its sharp divisions en fait, en droit, en conclusion, is commended as a model.

Though Dr. Strupp disagrees with the opinion of the court that the principles of international law existing at the time of the Peace of Stockholm and the boundary agreement of 1661 were inadequate to solve the controversy, he nevertheless approves the result arrived at by the application of present-day law. Nor does he agree that the facts are sufficient to create a prescriptive title by international law in either claimant. The final decision, which runs a line 19° south midway between the Grisbâdarna shoals, which are awarded to Sweden, and the Skjöttegrunde, which are awarded to Norway, has been criticised in some quarters as a jugement Solomonique." Dr. Strupp, however, calls attention to the compromis which requires the court to fix the boundary, "having regard to the circumstances of fact and the principles of international law." Though the exploitation of these famous lobster fishing grounds by the respective nations and the maintenance of an occasional light house or buoy here and there did not of themselves create any sort of exclusive rights, still they were pertinent "circumstances of fact"; and the court was free to apply such rules of law for determining maritime boundaries as best harmonized with these "circumstances of fact." In this opinion the reviewer heartily concurs.

It is true, as Dr. Strupp suggests, that this case is deserving of greater attention than it has heretofore received at the hands of students of international law. Though the res involved is apparently of small value, the law questions are quite intricate and, one might say, elusive.

No other decision of the Hague Court, in our opinion, demonstrates more convincingly the inherent possibilities of international arbitration and the potential power of the great tribunal at The Hague to keep the world at peace.

GEORGE C. BUTTE.

Anglo-American Isthmian Diplomacy, 1815–1915. [Prize Essays of the American Historical Association. 1914.] By Mary Wilhelmine Williams, Assistant Professor of History of Goucher College. Washington: American Historical Association. 1916. pp. xii+356. \$1.00.

A Committee of the American Historical Association awarded to this book the Justin Winsor prize in American history for 1914. This assures for it a high degree of accuracy and respectable literary style, for committees in the past have more than once withheld the prize for want of a worthy candidate. English-American Isthmian relations have been summarized in many books, and portions of the subject have furnished topics for monographic investigation.

Miss Williams's book claims attention for its distinguished patronage and because it is a consecutive study of the whole subject. It is based on a minute and painstaking study of all available English and American manuscript and printed sources, and the writer lists in her bibliography a wide range of secondary authorities from whom she has drawn more or less assistance. One expects the book to be, and it ought to be, a most useful contribution, but it is disappointing. It is a conscientious seminar report, with the defects of such an exercise, exhibiting immense industry but small sense of proportion. Details piled on details note every shade of shifting, transitory ministerial opinion in England, the United States, and Central America, as revealed in the diplomatic correspondence; and the really important aspects of the subject are lost in a desert of unessentials. The same fault is evident in the documentation. It hardly seems necessary in a printed book to make six or eight references in a single brief paragraph—as is frequently done—to a short document which forms the sole source of the paragraph. As a rule, over documentation is a good fault, and this criticism would be captious but for the fact that it emphasizes the principal defect of the book, its exaggeration of detail.

Henceforth the book must necessarily be on the shelves of all well stocked libraries and in the hands of professors of history, but students

and readers who desire a clear-cut presentation of the essentials of Anglo-American Isthmian relations must continue to use some of the excellent manuals listed in Miss Williams's bibliography.

EUGENE C. BARKER.

Per Un Irredentismo In Fatto Di Scienze Giuridiche. By Giulio Diena Torino: 1916. Societa Tipografico-Editrice Nazionale.

This slender pamphlet of some twenty pages by Professor Diena has as its theme "National independence in the legal sciences," more specifically, of course, independence of Teutonic theories and tendencies. Evidently suggested as it is by the reaction which the European War has produced in the Allied countries against the tyranny of German influences, we look with trepidation for a somewhat partisan development of the theme. Happily these fears are not justified; there is little in the article that could not be safely and usefully generalized and applied to other subjects far from Latin law or German science.

If we may accept the author's statements (and a very limited acquaintance with the theoretical department of Italian legal literature goes to support them), the fashion of the day has led the latest generation of the younger writers into a somewhat slavish adoption of the ideas and mannerisms of the extreme German Schools. These ideas are characterized by the ruthless application of logic to premises founded on mere assumption or abstractions, and by the tendency to develop the subject along abstract lines and without reference to the facts of life. The mannerisms are the mannerisms of the German language so far as they can be transferred to the Italian by copious quotation, barbarous translation and unmerciful interjection of foreign terms.

On the second count it may be said that the crimes committed under it are due in great part to a cheap parade of learning, to pedantry and to mere sloth. The German originals are certainly not to blame, and probably those who have been really gripped by the German ideas would be found to be the least guilty in this particular. It would seem that Italian jurisprudence has been suffering from a bad attack of a disease which is not unknown in other countries or other departments of science and of art. A new idea gains weight with a certain class of mind from its very vagueness, from its being only half understood. The very fact that it has to be sought and found in a foreign and unfamiliar language may supply this vagueness, which is all that is wanted to convert it into a religion. The natural history of most fads in art or pseudo-

science begins with the genius with defective power of expression, passes on to the enthusiasts with imperfect understanding and from them to the crowd of the faddists and the charlatans.

However, in this particular case, it may well be doubted how far the genius appears in it at all. Professor Diena is not at all disposed to question the value of German jurisprudence. He does question very positively the manner in which it has been applied and the attempt to take it as a universal measure, and he supports his thesis by citations from German authorities. We might have wished that he had left Nietzsche and his virulent criticism of his fellow countrymen out of the matter.

The countries of the Common Law do not seem to be in any particular danger from the tendencies that the author deplores. We could find there ample illustration of the same kind of over enthusiastic acceptance of foreign theories, some of them (in anthropology and in education, for example) native to Professor Diena's own country. However, it is fair to say that coming from that quarter they are at least in no great danger of barbarizing our language. Perhaps, the invasion of the Italian tongue by German sounds and idioms is the cruelest result of the condition that is described and the one that calls most loudly for the counter attack which is launched against it in the article reviewed.

JAMES BARCLAY.

l'Organisme des états-tampons gardiens de la paix. Essai d'une proposition de paix. By M. D. Horowitz. La Haye: Martinus Nijhoff. 1915. pp. 120.

This book may be an exegesis of the impossible, but it has certain distinctive qualities. The treatment is fresh, thoroughly well organized, and it defends a point of view which we have not seen presented heretofore. In brief, the author proposes the disarmament of the large Powers and the armament of the small buffer states with the advice and cooperation of the large Powers of Europe. The brochure was written in Antwerp, September last. Every page rings with the sincerity of one close to the war. Summarizing the conditions which provoked the present war, the author concludes that the one great cause was a developing international mistrust (méfiance internationale). Since this mistrust is the direct cause of war, the remedy must therefore lie in overcoming this mistrust. Disarmament, as ordinarily understood, offers no hopeful

solution of the problem; neither do armaments. The thousand and one frictions arising between the great states of Europe are principally due to their propinguity and to the uncertainties engendered by the unstable situations in the smaller states. The remedy, therefore, lies in the organization of the buffer states of Europe as follows: In the north, Scandinavia, Sweden, Norway and Denmark; in the south, the Balkans, Bulgaria, Serbia, Montenegro and Greece; in the west, The Netherlands, Belgium, Switzerland, Lorraine and Portugal; in the east, Rumania If these groups were organized by common consent, financed in the main by the large states themselves, and given police powers to defend themselves from invasion, while the large European states would be practically disarmed, it stands to reason that there could be no such war as is now devastating Europe. The author's analysis of the causes of the war are as excellent as any. His program for avoiding another such a war is theoretically perfectly sound. That it is practically unworkable is more of a criticism of human nature and of the political ways of men than of the author.

ARTHUR DEERIN CALL.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

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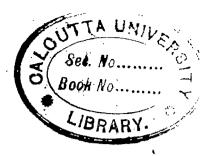
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UNJUSTIFIABLE WAR AND THE MEANS TO AVOID IT *

1. THE CONCEPTION OF JUST WAR

In the beginnings of international law, in Grotius and his predecessors and immediate successors, discussion of the Right of War, the jus ad bellum, takes up a great deal of room by the side of the Right in War, the jus in bello. Today, however, the question, When is war justified? has almost ceased to be discussed. The so-called predecessors of Grotius. like himself and his immediate followers, accepted from the Roman law the notion of the bellum justum piumque. This concept was purely To make a war a bellum justum piumque nothing more was required than compliance with the precepts of the fetial law as to the formalities of declaring war. To be sure, these, at least originally, required a resolution of the Senate and its ratification by the Centuriate Comitia. Later, however, this requisite, to which one could perhaps not always deny some material significance, completely disappeared behind the empty ceremony which the Pater Patratus performed at the boundary of the enemy country with the "hasta ferrata aut sanguinea præusta" hurled across the same. Nay, in the war with Pyrrhus, a deserter from the former's army was allowed to buy a piece of ground in Rome, into which the spear was flung as into hostile territory, in order that the Pater Patratus might not have to go all the way to the frontier. On these formalities, which naturally became more and more futile, Roman historians based their country's reputation of never having waged an unjust war. Still, the fetial law had at least the one advantage of giving the adversary a 33 days' respite for deliberation.²

To that meaningless formal conception of war Christianity sought to substitute a conception of just war based upon its merits. It was St. Augustine who, in his indictment,—for such his masterpiece appears to

^{*}Translated from the German by Aloysius Wenger, of Washington, D. C.

¹ Weiss, Le droit fetial, Paris, 1883, p. 27; Fusinato, R. D. I., XVII (1885), p. 278 ff.; Phillipson, International Law and Custom of Ancient Greece and Rome, II, 329.

² Phillipson, II, 335.

be,—of the Roman State and the whole of pagan civilization, set up another, deeper, material and less formal concept of war, which he developed more fully in his commentary on the Book of Joshua.³ According to him, only such war is just as is intended to avenge a wrong, to chastise a State for its failure either to punish one of its subjects for a wrong committed by him against another, or to restore what the State itself has unlawfully taken from another. Closely adhering to Augustine, Thomas Aquinas teaches, that three things are needed in order that a war may be called just: first, it must be ordered by the lawful authorities; secondly, there must be a justa causa, i. e., the foe who is being attacked must deserve this by reason of a wrong imputable to him; and, thirdly, there is required a right intention on the part of the attacking party, that is, a purpose to promote good, or to avoid evil.

The doctrine of the Church on war received its finishing touch in the writings of the Jesuit Francisco Suarez (1548-1617), whose great influence upon the natural law theory of international law is universally recognized. Leaning upon the Roman law theory of possession, he requires for the justification of war, in addition to its proclamation by the legitimate power, also a just cause and a good title; he further demands observance of due formalities and fairness in beginning the war, and in its prosecution and conclusion (debitus modus et aqualitas in illius initio, prosecutione et victoria). By justus titulus he too understands a wrong, and indeed a grievous wrong, proportionate to the evil of war. In weighing this motive for war, the prince ought to proceed conscientiously. The best and safest course, according to Suarez, would be to let arbitrators decide as to its adequacy. But arbitrators capable of inspiring sufficient confidence in both parties are not easily found, he thinks; therefore, this mode of deciding has become "rarissimum" and the prince may, provided he be in good faith, rely upon the judgment of learned and prudent men (prudentes et docti viri), appointed by himself.

The requirement of a justus titulus or of a justa causa is a very long step forward in comparison with Roman law; for there it was not a question of intrinsic equity, but merely of external, formal legality.

² Cited in the Decretum Gratiani, III, C. 23, que II, C. 2.

⁴ Summa Theologica, II qu. 40d. Bello, Art. 1.

One great difficulty in deciding the question whether or not a war be just, evidently lies in the fact that in almost all cases both parties claim to have the justa causa belli on their side. Can a war actually be a just one on both sides? This question has occupied in most lively fashion all authors who have treated the right of war according to the principles of Christianity. With very few exceptions, they have all answered this question in the negative. Only when on one side there is an innocent mistake as to facts, can a war, in their opinion, be actually regarded as a just one for both parties. And yet the contrary might not seldom be true. Not always is all the right on one side alone, and on the other only hypocrisy and sheer pretense of right. In many cases it is merely a question of how far back one follows up the chain of causes which have led to the war. A war may in its proximate cause be just, on the one hand, and in its remote causes be just on the other. Even as penal law opposes the auctor rixa, the originator of the strife, to the auctor pugna, the beginner of the fray, so the matter often stands in war. Only a mind penetrating to the remotest ramifications of the network of causes would in many cases be competent to decide on whom the original guilt rests. A wrong which State A may have committed years ago against State B, produces in the latter a feeling which gradually swells to bitterness, to hate, and finally leads State B to undertake something against State A. which furnishes this latter a just cause for war. Because of this reaction, which the injustice of the one party is wont to provoke in the other, it is extremely important that every difference between states be settled as quickly as possible by peaceful means, and best of all by recourse to law through arbitration, lest through some untoward event a too longcontinued tension between the parties concerned may break out into open war.5

It being in many cases impossible to answer squarely the question as to which side is right in a war, just as even in private quarrels, e. g., between man and wife or other relatives the fault is often a divided one, it is not to be wondered at that international law, upon descending from the heights of religious and philosophical contemplation to the domain of reality, put the question of the justness of war more and more out of

⁵ Cf. Lammasch, Lehre von der Schiedsgerichtsbarkeit in the Handbuch des Völkerrechts, Vol III, Part 3, p. 35 ff.

circuit. But this was not a step forward on the part of mankind. Even Hugo Grotius still explicitly teaches (L. II, cap. 1 and 22) that the legitimate cause for war consists solely in the wrong suffered, and refers to Augustine as his authority for the statement; but, that even ex justis causis war must not be undertaken rashly (L. II, cap. 24). To warn against wanton wars is the main purpose of his work De Jure Belli ac Pacis. Observing with horror for what trifling causes war in his days was often entered upon, and how all regard for divine and human rights vanished in war, he sought to show that there existed between states a common right that ought to prevail for wars as well as during wars (esse aliquod inter populos jus commune, quod et ad bella et in bellis valeret) (Prolegomena). The jus ad bellum has, however, disappeared from modern science. International law puts up with war as with a historical fact, without differentiating the rights of belligerents according to their right or lack of right to make war.

Surely only an intellect, such as de Laplace postulated ⁶ in a famous passage, but not that of our diplomats, would be competent to say which war is intrinsically just and which intrinsically unjust.

2. THE CONCEPTION OF JUSTIFIABLE WAR

But it is quite a different matter to determine whether a state, before it draws the sword, has done all that may be asked of it to reach a peaceful adjustment of its difference with another Power, or an equitable compromise of their conflicting interests. Nowadays, where the interests of all nations and states interweave, even the states that are apparently not concerned have the right to demand such a course from their fellow states. Experiences of recent date have shown that a war whose occasion may concern only two or three Powers has a tendency to carry away others too, and that a war of such dimensions, because of the enormity of the evil for the whole community of states, entitles all to demand from each other enough consideration so that they will resort to it as the last, the very last, expedient, only after having seriously tried all other remedies and these have proved unavailing. Wherefore, the Powers not directly interested in the conflict are entitled to be heard when proposing

Laplace, Essai Philosophique sur les Probabilités, Paris, 1814, p. 3.

mediation, and they are further entitled that they shall be bound to regard a war between other states as justifiable only when their proposals have been taken under earnest consideration. that, according to the modern acceptation of the term sovereignty, it cannot be said that any states have, with respect to others, a right absolutely to forbid them the waging of war. But neither, as was recognized in Article 3 of the Hague Convention of 1899 for the Peaceful Settlement of International Disputes, can they be denied the right to tender the states engaged in war their mediation or their good offices and, indeed, in such way and under such concomitant circumstances that this offer shall not be disregarded from the outset. To the outsider's right to offer his mediation there must correspond the duty of the contending parties, not, for sooth, to accept the mediation proposals, but certainly to listen to them and to take them under serious consideration. If it be "useful and desirable" (Article 3) that the strangers to the dispute tender their mediation, then the party which refuses even to hear their proposals violates his duty toward the Powers entitled to offer mediation, inasmuch as their intercession "must never be regarded as an unfriendly act" (Article 3, paragraph 3). For good reasons, therefore, did the Conference of 1899 reject the utterly illogical motion. of Velikovitsch that, as a converse to the Nigra motion, the Conference explicitly declare also that the refusal to accept a proffered mediation should never be regarded as an unfriendly act.

While heretofore an offer of mediation has been viewed rather as a "kind service" rendered to those bent on war, in the present state of the world this right is founded upon the rightful interest of those Powers that desire to preserve the peace of the world. If neutrals did not know it before, then the present war has opened their eyes to the fact that they cannot be left untouched by a war waged between great Powers. The notion that war affects only the belligerents and is for all others a res inter alios acta, is entirely false. As a matter of fact, even Abyssinia and Liberia have not been left untouched by the consequences of the present war. The Powers deeply engaged in international commerce have suffered economic damages which cannot be much less than those of many a war in the past. It is especially through the stoppage of commerce on the "free sea" (difficile est, satyram non scribere) that they

have incurred most serious losses in their import, export and transit trade and have thereby been thrown into crises which have reduced the earning powers and means of subsistence of millions of people. mobilization of nearly all the armies of Europe has also put the neutrals to enormous expense and cut deep into the incomes of families, their earnings and businesses. Numerous subjects of neutral states who heretofore peaceably followed their avocations in the territories of the belligerents, have been profoundly affected in their relations by the economic upheaval in those states. Family ties and business connections, which had been considered insoluble, have been most painfully disrupted. Citizens of neutral states have been maltreated because of the identity or similarity of their language with that of the belligerents. Investments made by neutrals in the war zones have been wrecked, etc., etc. Only when the war is over will it be possible to strike its frightful balance, frightful not merely for the belligerents, but also for the neutrals.

Speaking for America, Nicholas Murray Butler had this to say very recently:

It is idle to say that the American people are on the other side of the world and that these clashings and crashings are no concern of theirs. Ask the cotton-grower of the South, or the copper miner in the far West, or the lumberman on Puget Sound, or the shipper in New York, Baltimore or New Orleans, or the banker in Wall street, in State street or in La Salle street, whether he knows that there is a war in Europe, and get his answer. Ask the student of international law, or the expounder of political ethics and the sanctity of treaties, or the devoted believer in civil liberty, whether the United States has any interest in the conflict, and get his answer.

And for Chile, its representative at the International Agricultural Institute in Rome, Mr. Aldunate, declared that the financial consequences of the European War are so serious for his country that it is compelled to practise the most rigorous economy and is no longer able to contribute its customary yearly quota of 40,000 francs, but must ask to be enrolled, until further notice, in the second class of states with a contribution of only 20,000 francs.⁸

⁷ The Changed Outlook, New York, 1915, p. 5.

⁸ Procès-verbal du comité permanent, 30 October 1915.

Compared with the enormous total of damages, sorrows and miseries, which even the neutral Powers and their subjects have suffered in this war; compared with the irreparable agricultural losses in all countries, the profits made by individual manufacturers and speculators in neutral states, by a traffic which, judged by its effect, is a traffic in human lives, are not worth considering. True, not all gains derived from war are immoral like the above. The earnings of shipping companies and of peace industries are from a moral standpoint quite unquestionable. But even these can not be decisive in the face of the tremendous national losses. From this due balance of war, even for neutrals, they will learn to strain every nerve never again to be taken unawares by a world war, and promote every measure for making a repetition thereof more difficult and unlikely.

The days are no more when the suburban citizen, taking his stroll upon the towered ramparts of his native town, could chuckle with delight because he knew of no more pleasant holiday pastime

> "Than to talk of war and battleery, When yonder in far away Turkey Nations pounce upon each other."

Today the "et tua res agitur!" applies to him too. Wherefore, his state has a right to call out to those lusting after war: "Listen to me; I will try and settle your dispute. Should I fail in my honest endeavors, you are welcome to smash each other's skulls. But hear me you must, and that willingly and in earnest. Whoever turns down this request of mine, him I shall treat as a disturber of the common peace. His war I shall regard as an unjustifiable one; that of his adversary as justifiable. I shall hold him responsible for every damage which I myself and my citizens may suffer through his obstinacy and his lack of consideration for us. I shall not, indeed, attack him myself; but I shall allow my citizens everything against him and nothing for him. They may, if they please, enlist in the army of his adversary, and supply the latter with money and war material. But to him they shall give no such help."

This way of differentiating the party entitled to make war from the party not entitled in this sense, being based upon external, easily ascertainable facts, would be just as easy to carry out as a differentiation of just from unjust war founded upon the ætiology of the war will almost always fail in practice. Should the mode of differentiating, as here proposed, gain international recognition and standing among civilized states, they would, in their mutual relations, reach that degree of civilization which the German Empire attained in its internal organization 700 years ago, through the Public Peace statute of Frederick II, of 1235, which permitted self-help through private warfare only when recourse to judicial proceedings had been had in vain. War would thereby be forced into a subsidiary position. States would resort to this extreme, desperate expedient only after having actually exhausted all pacific means.

3. PROBLEM OF THE CIVILIZING VALUE OF WAR

Would it be desirable to relegate war to such a subsidiary status? Does not rather war possess an independent cultural value, distinct from all pacific means of settling disputes? The attempt to establish this has often been made, even very recently by Steinmetz in a work which distinguishes itself among many of its predecessors by a striving after freedom from prejudice truly worthy of appreciation.⁹

It would be folly not to recognize that war can also produce favorable results. Is there, generally speaking, an evil that does not result in or bring with it some good, or any good thing that does not bring with it or result in some evil? The only question is whether in war the good outweighs the bad, as Steinmetz emphatically asserts.¹⁰

The main, and in a certain sense a new, argument in his reasoning, is to the effect that war is the only effectual "states competition" for stimulating human activity and hence can "never be abolished without detriment to mankind" (page 208). To begin with, no man of judgment thinks of "stopping" war by means of a treaty or decree. The most that may be hoped for, in the distant future, is that war, like other antiquated institutions, and like bodily organs whose functions have been taken over by others, may gradually die out, become "rudimentary," as evolutionists express it. Steinmetz is probably right, that for the development of the

⁹ Philosophie des Krieges. Leipzig, 1907. Compare in particular, pages 13 ff., 73 ff., 335 ff.

¹⁰ Page 190, "If there were no war it would have to be invented!"

human race the possession of aggressive propensities, a right good dose of pugnacity, was of advantage, perhaps even a necessity. "Then already was it to man's best interest to have incurred the enmity of man. * * * Among God's most precious gifts to man belongs a genuine foe" (p. 21). The struggle with the animal world, and the overcoming of elemental difficulties alone would not have developed man's physical and intellectual faculties to the same extent as battling with fellow-beings of like intelligence. Without doubt, even today a social order in which every occasion for competition were wanting would lead to racial retrogression. But, in our day, does this emulation still consist in strife alone, in bloody life-and-death struggle? No doubt, war is an important transition stage of man's evolution upward. But such also was slavery. Would Grecian culture, to which we owe so much, have been possible had not slaves performed all menial labor and thereby relieved the free-born Hellenes? And even so, was revenge for blood a necessary prodromal stage in the evolution of public punishment? Who would, on that account, justify slavery or feuds as suited to our times and circumstances? For the world of today that argument is therefore not pertinent. Granted that a man of Tolstoy's spiritual type would have been an unfit ancestor of the human race, what follows from that for the present time?

Not merely "symbolical" (p. 200), but real competition between states is possible also in peaceful ways. For, is it not given to every state to compete with the others in exerting all its powers to assure to its citizens the highest development of their faculties, and make life for them really worth living as a steady advance toward a loftier psychical evolution. Steinmetz may rest satisfied that in a state pursuing such a course the citizens would not "die from sheer tedium," as, according to his assertion, happened to the Indian wards of the erstwhile Jesuit State of Paraguay. Such a state would not only make the greatest achievements possible for those who belong to it, but exert a powerful attraction on the citizens of other states. It would not thereby weaken itself, but rather gain new strength.

¹¹ In regard to the Jesuit dominion in Paraguay and the consequences of its destruction, compare the judgment of Elisée Réclus, *Nouvelle geographie universelle* XIX, p. 497 ff., one certainly not suspected of clerical bias.

Likewise erroneous is Steinmetz' assertion that the abolition of feuds within states cannot be regarded as a precedent for putting down warfare between states (p. 211). If for "direct state conflicts" there is no other form than war, then is there also for direct conflicts among individuals no other form than the sanguinary man-to-man fight. Like Hegel, Steinmetz extols war as a world judgment, as the "executioner" of states sentenced to death by the verdict of history (p. 222). In such a deduction from history one must never put the episode above the final act, and never forget that if defeat is to pass for condign punishment of the vanquished, victory must be viewed as the just reward of the opposite party. Had Steinmetz taken this into consideration, not only would his Dutch conscience have caused him difficulties in his review of the Boer War (p. 230), but also his verdict about Jena (p. 223) and the partition of Poland (p. 232) would probably have been different. should, peradventure, Cannæ be regarded as evidence of Rome's unfitness to live in Hannibal's day? For the rest, Steinmetz is not combating the ideals of thoughtful pacificists, but those of phantastic Utopians. No judicious pacificist wants to gather mankind into one single state, but while preserving in general their individuality, unite existing states into a "union of purpose" for insuring peace. But neither will this union be a perpetual one.

As long as "folly and passion," as Treitschke ¹² so aptly says, "are great Powers in the world's history," war will not die out. And it is scarcely to be assumed that wisdom and prudence will ever come into uncontested control. This conviction does not, however, preclude the thoughtful from attempting to press their conviction. Even if the time has not yet come for the fruits of conviction to ripen, it is none the less the duty of all who are imbued with this conviction to spread it and make it sink deeper and deeper. ^{13, 14}

¹² Politik, II, 544.

¹³ Viscount Morley, on Compromise, London, 1913, The Realization of Opinion, p. 201, at p. 216 ff.

¹⁴ Against Steinmetz compare also much that is pertinent in Colenbrander, *Tien jaren wereldgeschiedenis*. The Hague, 1915, II, 339 f.

4. THE VALUE OF GAINING TIME

If a number of states, with at least one great Power among them, were to accost the bellicose ones with a request such as that described in Part 1, and demand that they postpone hostilities for, say, three months, in order that during this delay, with the cooperation and under the lead of the mediators, the negotiations already broken off may be resumed and continued, there would thus be gained what in many cases is the most important element: Time. By postponing the commencement of hostilities it would no doubt be possible in many cases to preserve the peace, not so much, perhaps, through the mediator's influence as through a change of temper in the war-inflamed states themselves, both parties having in the meantime become convinced that a mutual reconciliation, with perchance an honorable adjustment, is better than war with its always uncertain outcome and usually disproportionate sacrifices. The most important thing, in questions of such consequence and responsibility, is to exclude the use of the telegraph.¹⁵

It is true that every nation contains numerous and influential elements tending to predispose the state for war. First, of course, come the military circles, which, of necessity, must, at least now and then, be straining at the leash to prove their efficiency, to show what they can do. These would, indeed, be downright untrue to their calling if in a conflict between their state and another one they failed to take into consideration also the latter's high-handed, bloodthirsty decision. But apart from these professional war-seeking elements, there are in every state still more influential circles at work seeking in a business-like manner, through thirst for lucre, greed, or profit, to involve their country in war: the combined armaments industry for war on land, by sea, undersea and in the air, nowadays, thanks to progress in technique, so frightfully developed and ramified; those guilds of war parasites, eager to exploit for their own profit, by means of price manipulations and usurious exactions the millionary armies' demands for enormous and quick deliveries, many of them even stooping to embezzlement, fraud and falsification; stock-jobbers, who, through the rise and fall of stocks, do their most profitable business not so much during war as in times of threatened war;

 16 Regarding the suddenness with which the Franco-Prussian War broke out, compare Higgins, War and the Private Citizen, p. 24 f.

the great powers of finance, who derive from war loans their profits amounting to millions and thereby become the real kings of kings; magnates of the press, who during war obtain a sway over the minds and feelings of the nation, which is denied to its noblest thinkers and investigators. All these elements which, no matter how embarrassing they may often be to the governments, are nevertheless not restrained by them in season, because, for sooth, they themselves desire to make use of them on occasion, are able, by working together, to throw nations into a psychopathical fit in which they actually believe they want war. But this mood cannot last long. No matter how strong the mental contagion emanating from those circles may be, it is equally as fleeting. Within a few weeks after the danger of war has become imminent, when no one can any longer doubt the extreme gravity of the situation, when feverishly accelerated armaments have already reduced a large part of the nation to a state of war, when all able-bodied men have been snatched from their families, their callings and their occupations, all the latent tendencies that make for peace will also come into action on both sides. The combined civil administration, the departments of finance, industry, commerce, agriculture, transportation, education, justice, will express their scruples; the clergy, physicians, heads of families, the women-folk, will raise their voices in protest; economic organizations will warn and dissuade. Even though everything be carried out in perfectly legal form, and perhaps even parliament and the freedom of the press may already have been suspended as a war measure, the opposition will none the less make itself felt with sufficient power. This opposition on both sides will cause the governments, which until now were both bent on war, to ask themselves once more whether the uncertain outcome is worth the certain losses and whether they had not better heed the advice of the mediator and place the drawn sword back into its scabbard. This pacificating influence of time, of postponing hostilities, had already attracted attention at the Second Hague Peace Conference in connection with the subject of declarations of war. A motion by the Russian Colonel Michelson and the Dutch General den Beer-Portugael proposed that between a declaration of war and the beginning of hostilities there should be interposed a respite of at least 24 hours.¹⁶ In support of this motion they

18 Actes et docs. I, p. 133; III, pp. 165 to 176.

pointed, among other things, to the possibility of utilizing this interval for an attempt at mediation by neutrals. The motion was, however, categorically rejected by most of the great military Powers, ¹⁷ evidently because they did not want to divest themselves of the advantage a start in mobilizing would possibly afford. Likewise in the future it will scarcely be possible to provide by means of a general agreement between all nations for such a delay for further reflection. ¹⁸ Individual Powers will be ready for it in their relations with one another. But an agreement, in which all great military Powers would take part, will for a long time lie outside our range of vision. No matter how deserving all movements in this direction are, world peace will not be insured by means of a treaty between those nations from which its disturbance would have the most to be apprehended.

Meritorious proposals of this sort first came from America. They were contained, in the first place, in the draft of an Anglo-American arbitration treaty drawn up by Secretary of State Olney and the British Ambassador, Pauncefote, then more especially in the Bryce-Knox treaties of 1911, which, unfortunately, were also rejected by the American Senate. However, the idea of the paramount importance of gaining time, of allowing a further delay for deliberation, was carried over into the positive conventional law of a series of states through the United States treaties of 1912, elaborated by the American Secretary of State Bryan. By virtue of these treaties the contracting states have bound themselves to submit all disputes, which can not be settled by diplomacy and which they are not obliged by existing treaties to submit to arbitration, to investigation by a permanent international commission and have agreed not to declare war or begin hostilities before this commission has made its report, which must be presented within one year at the latest. 19, 20 That great military Powers would be willing to conclude such treaties

¹⁷ Austria-Hungary abstained from voting. III, p. 176.

¹⁸ Cf. Savornin-Lohman, Gedachten over oorlog en vreede, The Hague, 1914, p. 67.

¹⁹ For these treaties, see Lange, *The American Peace Treaties*, Christiania, 1915. *Cf.* also Beaufort, *De oorlog en het volkenrecht*, Amsterdam, 1915, p. 14 f. See also Supplement to this Journal, pp. 263–309:

²⁰ The treaty with San Salvador, moreover, contained the provision that during the term allowed the commission for making its report, "neither state should increase its military or naval armaments," a standard which very properly was not retained in any of the ratified treaties, Lange, *ibid.*, p. 15.

with their neighbor states, great or small, is, as already stated, most improbable, for the simple reason that they will not be willing to forego the chances of a presumed start in war preparations. On the other hand, it is altogether possible that they may enter into a treaty of this sort with states from which they are separated by great distances.²¹

For the same reason it is precisely these Powers who will likewise not feel inclined to recognize themselves or to participate in an international conciliation council (*Conseil de Conciliation*) as proposed by Woolf ²² and the *Anti-oorlog-raad*, ²³ no matter how valuable these conventions may be in themselves.

5. THE NEUTRALS' RIGHT OF MEDIATION

The idea developed above differs from the proposals previously referred to in that it does not make the procurement of the stay of hostilities dependent on the good will of the states involved in the quarrel, nor presupposes between them the existence of a treaty pursuant to which they would forego to take advantage of their lead in preparedness. To realize the present proposal only requires a firm resolve on the part of those not involved in the dispute to take vigorous action in the interest of the maintenance of peace.

It will, of course, be immediately objected that this proposal exposes the very neutrals whom it aims to save from harm, to a much greater peril; that it is intended to spare them the indirect disadvantages of war but exposes them to the danger of having to endure its direct effects; that it exposes them to the risk of themselves becoming implicated in the war: for a Power, determined to make the most of its advantage in armaments and not to acquiesce in any postponement of hostilities, would have the right to answer that threat with a declaration of war against the menacing party. Theoretically this is perfectly correct. In practice, how-

²¹ Had the German Empire accepted the treaty proposed to it by the United States, the risk of its becoming involved, during the European War, in war with America too, would have been considerably lessened in advance, because from the appointment of the commission until war became permissible a year's time for reflection would have had to elapse.

²² New Statesman, 10 July 1915.

²³ Report of von Loder and Suyling, Avant-projet d'un traité général relatif au règlement pacifique des conflits internationaux, The Hague, 1916.

ever, there is no reason to fear that this will happen when the mediation offer, ensuing under the sanction herein explained, proceeds from a confederation of neutrals sufficiently numerous, powerful, determined and united. The combined power of the states interested in the preservation of peace will surely always be greater than that of one of the parties facing each other with warlike intent. No one, be he ever so strong, will want to draw upon himself, in addition to the adversary he is about to attack, so many accessory foes. Only a state intent upon a plain war of conquest would categorically refuse every pause likely to prejudice his start in preparedness. But by his refusal he would ipso facto reveal that such is indeed his object in going to war, a thing that surely everybody would want to avoid as much as possible. Everything, therefore, depends upon such a combination of neutrals to demand from the warlike parties a stay of hostilities, and possessing sufficient authority and adequate power to press its demand. The announcement that the two belligerents will be treated differently must be sufficient to cause the party which is inclined to exploit his lead in preparedness to desist. The disadvantage to him of the support held out to his opponent, must outweigh in his estimation the advantages resulting from greater preparedness.

Obviously such a federation of neutrals will not be composed of the same Powers in all cases; for it will consist of those states which are not interested in the concrete quarrel and are, therefore, resolved to attach themselves to neither of the contending parties in this case, but to remain neutral. In one case it will be these Powers, in another those. But in order that the concert may get into action promptly, which is absolutely necessary, there is need of a permanent nucleus. This is furnished by such states as are determined never to wage any war other than a defensive one; the neutralized states and those that aspire to recognition of their neutrality: Switzerland, resurrected Belgium, and the Scandinavian countries, possibly also the Netherlands. These states would have to declare themselves in advance as prepared to take such a step in future cases and without delay to summon all other Powers, which according to the peculiar circumstances of the case will presumably remain neutral, to join them.

Among these Powers there will almost always be found some great

Power, in particular, the United States of America, if the Monroe Doctrine may also be conceived as a declaration of non-intervention in European affairs. In this hypothesis it is not likely that any state, no matter how eager and well prepared it may be for war, would want to run the risk of seeing its adversary reinforced by the support of such a concert, but would rather consent to a stay of hostilities for a few months and to renewed attempts at compromise. At the expiration of that term, should it be impossible to adjust the difference, he would recover full freedom of action and no longer have to fear those handicaps.

One incidental effect of such a procedure on the part of the neutrals, and one not to be underestimated, is that the value of a lead in armaments would be lessened and thus the struggle of the Powers to attain it likewise reduced. The sacrifice which individual states would thereby impose upon themselves would not be so great as might at first sight appear, illusions in this very subject, being, as experience teaches, by no means rare.

For the neutrals this proposition would have the advantage that the admissibility of deliveries of war material to the one side would be assured to their citizens, while otherwise it is perhaps to be expected that the demand for a general prohibition of such deliveries will grow more and more insistent.24 No doubt, it will be objected that the theoretical admissibility of such deliveries does not always mean a practical possibility, for it may so happen that precisely that state to which deliveries would be permissible, might not need them, or that as a matter of fact they could not reach the state that might need them. The former eventuality is very improbable; for that state which declined to continue negotiations, and to which, therefore, deliveries would not be permissible, will also be the one that does not stand in need of them; while his adversary, to whom they may be sent, will be the party in need. The second eventuality is, of course, again possible in the future. But the stronger the alliance of neutrals, the better will it be in a position to see to it that the rights of those belonging to it are really respected.

²⁴ Cf. my "Mediationsrecht der Neutralen," Öest. Ztschr. f. öffentliches Recht, II (1915), p. 214. To the literature there quoted should be added Laudon, Drie reglen van het tractaat von Washington, Leiden, 1890, especially p. 77 and p. 103 ff.

To be sure, even this scheme presents no panacea. It too will in many instances fail, either because one of the two parties to the dispute refuses to enter into the proposition, or because an adjustment of the dispute by mediation does not succeed. Neither, however, is likely. At all events, the neutrals, in case their action has been in vain, can with a good conscience say to themselves that they have done everything within human power to avert war.

In order to be able to make the threat, namely, that the neutral Powers will permit their people to give every support to the party willing to negotiate, while, on the other hand, they will forbid any help being given to his adversary, it will be necessary to alter Article 7 of the conventions respecting the rights and duties of neutrals in case of war on land and in naval war, which conventions would otherwise stand in much need of supplementing and emending.

It is perhaps not too optimistic to hope that by the way here indicated the rule of right may penetrate also into the sphere of war to the extent of confining the latter to those extreme cases in which all other remedies for the settlement of differences among states have actually failed. Strangers to the dispute, who exercise with prudence and energy the right of mediation as their most important right of neutrality, will thereby not only serve their own best interests, but also prove themselves in the highest degree benefactors of mankind.

HEINRICH LAMMASCH.

THE LEGAL NATURE OF TREATIES

The celebrated scrap of paper incident is perhaps thought so effective a commentary on the "legal nature" of treaties that it needs no addition. "Treaties won't stand before policy and there's an end on't." The student of history is likely to take a more cautious view. He knows that treaties have been one-sidedly abrogated before. He knows that the ambiguous phrase rebus sic stantibus has generally been an implied accompaniment of treaties, and yet he knows that treaties have continued to be concluded and in general observed.

In spite of the consolation to be found in these reflections, the recent failure of a treaty, just at the time when a Third Hague Conference was due, is of unusual significance. It marked a break in the steady progress which codification had made in international law since the Declaration of Paris of 1856. If a treaty, ratified and reaffirmed with such solemnity as the Belgian Neutralization Treaty, was worthless, were not the hopes for world organization and codified international law by means of conventions pretty thoroughly shattered? It was a severe blow to the "legal school" of international law, and while it might be regretted, yet it gave cause for grim complacency on the part of those, who, looking askance at the codification movement, have been dubbed the "diplomatic school." ¹

All branches of jurisprudence may be approached from two stand-

¹ Oppenheim has suggested this division of the schools of international law in his Introduction to Westlake's Collected Papers on Public International Law. It should be noted that this classification is not parallel to the traditional division of international law writers into Grotians, Naturalists, and Positivists. Adherents of both the legal and diplomatic schools may be positivists in the sense in which the term is used in international law. In general jurisprudence, however, the positive school has a different significance, referring to the followers of Austin whose attitude toward international law has been characterized by the term applied to them by Oppenheim, "deniers of international law." Members of this school of jurisprudence may, however, belong to the legal school of international law, in a sense. They assert that international law is not yet law, but will become so when codified and enforced by an organized international authority. The attitudes of the legal and diplomatic schools of international law are thus parallel respectively to those of the positive and historical schools of general jurisprudence.

points. Law may be regarded as primarily a means to an end: its functional or teleologic aspect may be emphasized most prominently. With this view, when a utilitarian theory of morality begets a confidence in man's power to judge of ends, and means for their attainment through law, the conscious shaping of rules of law to existing conditions and the clarifying of their expression, becomes the desideratum. Legislation and codification become the interests of the jurist.

On the other hand, law may be regarded as an organic growth, which legislative interference is more likely to spoil than remedy. Adherents of this point of view are struck by the enormous complexity of human relations. They see that law has grown in the past by a subconscious process of trial and error. They doubt the ability of man to improve on this natural process by reason. Hence interest is centered on the historical growth of law and the tendencies which are discoverable by an inductive study of such development. Law is to be approached reverently as a guide to an understanding of the nature and destiny of man, rather than as a tool to be bent to his present purposes.

The nineteenth century witnessed the predominance of the teleologic school in national jurisprudence. With Benthamite utilitarianism as a criterion of ends and Austinian sovereignty of the state as a means, the growth of law become conscious and rational. Legislative reform and the codification of law were attempted in all civilized states.

It appeared that the twentieth century was to witness a similar development in the field of international law. The draft codes of Dudley Field, Bluntschli and others, the Declaration of Paris, the Geneva Conventions, the Declaration of St. Petersburg, the Hague Conventions and the Declaration of London, seemed to be paving the way for periodic congresses at The Hague to legislate for the world and to codify the law of nations by treaty.

It is true that this movement had had its critics. As Savigny in Germany and Maine in England had doubted the wisdom of an unconditional giving over of law to the legislature, so many of the ablest writers in international law had felt that the law of nations must still be content with the slow progress which would come through unconscious historical development. They felt that conventional law, drafted on the moment, and often on an incomplete induction, would, like too

many statutes, be made but to be broken; and that regularity of observance could only be assured of rules sanctioned by long custom.

It is not the purpose of this article to show either that the hopes of the legal school were premature or that the skepticism of the diplomatic school was without foundation. The object is rather to show how treaty-made international law can and in many cases has gained the sanction ordinarily associated with customary law, that of inertia, resulting from long-continued usage. In so far as treaties are habitually referred to as a rule of action by the administrative and judicial officers of states in deciding cases which come before them, this result is obtained. It remains to inquire to what extent treaties are regularly utilized as a source of law in the leading states of the world.

1. THE NATURE OF TREATIES

Are international treaties and conventions an immediate source of law to be applied by courts? This question seems easy to answer. By the constitutions of the United States ² and Mexico ³ treaties are declared to be the supreme law of the land and are applied by courts in appropriate cases involving private rights in the same manner as statutes.⁴ Courts in Switzerland, Germany and France have shown a tendency to apply the provisions of promulgated treaties as a rule of decision in recent cases ⁵ although they have sometimes expressed the opinion, in France especially, that such instruments are to be executed by the political organs, and that their rules become cognizable by courts only when embodied in statutes or ordinances. In England it is firmly established that a treaty is not an immediate source of law for courts, except prize courts, and can not operate to divest legal rights of Englishmen even when its provisions are embodied in executive orders.⁶ An enabling act of Parliament is necessary to accomplish that result.

- ² Constitution of the United States, Art. VI, sec. 2.
- Constitution of Mexico, Art. 97, cl. 6.
- Ware v. Hylton, 3 Dall. 199 (1796); Wharton, A Digest of the International Law of the United States, 2d ed., Washington, 1887, 2; sec. 138.
- ⁵ W. Kaufmann, Die Rechtskraft des Internationalen Rechtes und das Verhältnisse des Staatsorgans zu demselben, Stuttgart, 1899, p. 86, et seq.
- ⁶ Walker v. Baird, L. R. (1892), A. C. 491; T. E. Holland, Studies in International Law, Oxford, 1898, p. 190, C. M. Picciotto, The Relation of International Law to

These statements, however, are made on the supposition that agreement is reached as to what constitutes a valid treaty. What procedure must be consummated before an instrument negotiated between the executive authority of two nations becomes a genuine treaty at international law? Signature by the plenipotentiaries, with full powers to conclude the treaty, does not have that effect. Ratification by the authority in either or both signatory states, competent by their constitutions to perform that function, does not. It is only after exchange of ratifications, evidenced by official publication in the signatory states, that the instrument is generally considered internationally binding, in the sense that the national honor is pledged to its observance and a violation will give just cause for diplomatic protest. This then is the criterion selected for deciding when an instrument is a treaty at international law, and hence for deciding whether treaties are an immediate source of law to be applied by courts.

The incapacity of the courts of some countries, especially of England, to apply treaties, even when ratifications have been exchanged, is, however, so generally known that it might well be considered subject to international cognizance. A foreign state does not in fact regard a treaty with England affecting the rights of individuals as completed until an act of Parliament has provided for its execution. Sometimes, in fact, the effectiveness of the treaty is in terms made dependent on such an act,⁵ and often the Cabinet, although legally competent to exchange ratifications, will not do so until Parliament has acted.⁹

the Law of England and of the United States of America, New York, 1915, p. 59, et seq. On the application of treaties in prize courts, see The Chile, L. R. (1914), p. 212; Picciotto, op. cit., p. 42.

- ⁷ L. Oppenheim, International Law, 2 vols., London, 1912, 1: 561, speaks of ratification alone as giving treaties a binding effect. The final consent of both parties, as evidenced by the exchange of ratifications seems to be necessary. Kaufmann, op. cit., pp. 39–40.
- *Thus the extradition treaty of 1852 with France provided that "Her Majesty engages to recommend to Parliament to pass an act to enable her to carry into execution the articles of the present convention. * * * And when such act shall have been passed, the convention shall come into operation from and after a day to be fixed." Holland, op. cit., p. 190.
- ⁹ Thus the ratification of the Declaration of London was withheld, pending passage of the proposed Naval Prize Bill of 1911, which being thrown out by the House of Lords, the convention was not ratified. In Halsbury, Laws of England, 6:440,

Some writers, therefore, notably Kaufmann, point out ¹⁰ that the completion of a treaty must be considered a process of four rather than of three stages: (1) signature, (2) ratification, (3) exchange of ratifications, and (4) putting in force, which includes all acts such as publication, assent of the legislature, or even passage of enabling acts and promulgation of executive ordinances, necessary to give the instrument legal effectiveness, not only as between the two states, but also as to all private individuals and administrative and judicial officers deriving rights or duties from it. After exchange of ratifications, the treaty is concluded (abgeschlossen); only after these final acts is it in force (vollziehbar). In the United States exchange of ratifications has both effects, except for treaties requiring an appropriation and possibly for treaties affecting the tariff, which require the consent of Congress. In England the treaty is concluded on exchange of ratifications, and is in force on the passage of an enabling act.

There is an apparent contradiction in the constitution of a state which permits one authority to exchange ratifications, thus engaging a national responsibility, but yet requires the additional act of other authorities to put the treaty in force in the sense of giving it internal effectiveness. This contradiction is in fact resolved by a sort of comity which may exist between either the departments of government within the state or between the two states. Thus by a constitutional understanding the legislature may be bound to pass acts necessary to give effect to ratified treaties. In the United States this principle has been judicially asserted, 11 and legislative concurrence, where necessary, has rarely been withheld. 12 But here the necessity of the concurrence of

note (e), it is stated that "In England there is no codified list of subjects upon which the Crown has power to bind the subject by treaty without Parliamentary sanction. But where any reasonable doubt arises it is usual either to obtain statutory authority beforehand, or to stipulate in the treaty that the consent of the legislature shall be obtained."

¹⁰ Kaufmann, op. cit., p. 31, et seg.

¹¹ Justice Iredell in Ware v. Hylton, 1 Dall. 199 (1796). See also Mr. Livingston, Sec. of State, to Mr. Serurier, June 3, 1833, Wharton, 2:67; Cushing, Att. Gen., 6 Op. 296 (1859); Dana, notes to Wheaton, p. 715.

¹² In the case of a treaty with Mexico of 1883, providing that necessary legislation should "take place within twelve months from the date of exchange of ratifications" (Art. 8, Malloy, p. 1151), Congress failed to act. Moore, 5:222.

two-thirds of the Senate for ratification makes Congressional disapproval of a ratified treaty unlikely.^{12a} In other countries legislative obstruction of treaties has been more frequent. But in such a case an understanding usually exists with the other signatory that the treaty can only become effective on legislative action.¹³ In fact, in some English treaties this dependence of the treaty on Parliamentary action has been specifically provided in the instrument itself.¹⁴

From a standpoint of pure law, the contradiction can be resolved either by a change of the national law, so that ratification followed by exchange of ratifications, through whatever procedure provided, will make the treaty enforceable, or by a frank recognition on the part of nations that exchange of ratifications, with some states, is simply a step in the procedure of completing a treaty, which is not consummated until all acts of legislative and executive departments necessary to give the treaty complete internal validity according to the constitutional law of that country, have been carried out.

The origin of this curious contradiction in the constitution of many states is to be found in the rise of constitutionalism and the division of the powers of government among various departments, each of limited authority and consequently incapable of performing executory treaties unless validated by the organ constitutionally vested with authority to legislate for it. A treaty was originally a pact between monarchs, who, having immediate authority over all officers of government and subjects, were in a position to fulfill its conditions, whether it required

- ^{12a} A Constitutional amendment changing the rule requiring assent of two-thirds of the Senate to one requiring approval by a simple majority of both houses has been advocated on the ground that the latter would be *easier to* obtain. J. T. Young, The New American Government and its Work, New York, 1915, p. 25.
- ¹³ "A treaty is the supreme law of the land in respect of such matters only as the treaty-making power, without the aid of Congress, can carry into effect. Where a treaty stipulates for the payment of money for which an appropriation is required, it is not operative in the sense of the constitution. Every foreign government may be presumed to know that, so far as the treaty stipulates to pay money, the legislative sanction is required." Turner v. Am. Baptist Missionary Union, 5 McLean, 347; Wharton, 2:73. In a strictly legal sense it is doubtful whether such a presumption is warranted.
- ¹⁴ British extradition treaty with France, 1852; treaty ceding Heligoland to Germany, 1890, see Holland, op. cit., p. 190. See also treaty of Washington with the United States, May 18, 1871, Art. 33.

a single action, such as the payment of a sum of money or a cession of a tract of land, or continuous action, such as the protection of the rights of domiciled aliens or the extension of specified advantages to merchantmen and privateers of the other signatory in time of war. When, however, the monarch lost his control of both the judiciary and the legislature, treaties ratified by him could have for those organs no more validity than any other ordinance or exercise of the prerogative, and yet he retained the power of exchanging ratifications because the control of foreign relations continued to be left with him as chief executive, and it was not fully realized that public officers and individuals as well as states were immediate subjects of conventional international law. In England, therefore, where Parliament has been most emphatic in its limitations upon the power of the prerogative to affect private rights, the necessity of a Parliamentary enabling act has been most evident.

However, while the constitutional protection of personal liberty appeared to demand that private rights be protected against the arbitrary granting away of the executive, the international responsibility involved in treaties seemed to demand that once that responsibility be undertaken by exchange of ratifications, the ability to execute should exist. This latter aspect of the case has had a tendency to prevail during the past century, but with a recognition of the former. Beginning with the American Constitution of 1789, there has been a tendency (1) to require the concurrence of more authorities for ratification, but (2) to give treaties once ratified a higher legal validity within the state.

(1) In most countries the executive alone is no longer competent to ratify treaties. By the United States Constitution, ¹⁵ treaties must be ratified by the President by and with the advice and consent of two-thirds of the Senate, and by an extra-constitutional custom, treaties requiring appropriations and possibly those affecting revenue laws, require assent of the House of Representatives also. ¹⁶ By the German

¹⁵ United States Constitution, Art. 2, sec. 2.

¹⁶ Wharton, 2:19, 21. Practice indicates the necessity of Congressional consent to commercial treaties, but "judicial decisions sanction the contrary view, namely, that the treaty power can effect customs agreements with foreign Powers without Congress being consulted," E. S. Corwin, National Supremacy, New York, 1913, p. 11, citing Bartram v. Robertson, 122 U. S. 116 (1887), Whitney v. Robertson, 124 U. S. 190 (1888).

Constitution 17 the Kaiser may enter into treaties, but ratification requires the "zustimmung" of the Bundesrath and the "genehmigung" of the Reichstag. The French constitutional law 18 provides that the President may negotiate and ratify treaties, but treaties of peace and of commerce, and those requiring an appropriation or affecting the personal or property rights of Frenchmen in foreign countries, may not be ratified until they have received the assent of both chambers of Parliament. In practically all continental European states assent of the legislature is required to treaties affecting personal rights before a definitive ratification. 19 This assent, however, is not equivalent to the passage of an enabling act. "The legislature in such a proceeding acts as a council of state, rather than as a representative of the people or of the other constituencies, and really discharges an executive function." 20 In England both negotiation and exchange of ratifications are still in the power of the Crown acting through the Cabinet,21 but frequently the effectiveness of the treaty is specifically made dependent upon action by Parliament, or actual exchange of ratifications is withheld until such action has been forthcoming.22

(2) On the other hand the capacity of courts and administrative officers to use treaties as an immediate source of law and jurisdiction has undergone a development. The American Constitution ²³ makes treaties the supreme law of the land on a par with statutes, and the pro-

¹⁷ German Constitution, Art. 11; Kaufmann, op. cit., p. 35.

¹⁸ French Constitutional Law, July 16, 1875, Art. 8; Esmein, Le Droit Constitutional Français et Comparée, Paris, 1914, 6th ed., p. 762.

¹⁹ Austria, Constitutional Law, Dec. 21, 1867, sec. 11 (a); Austria-Hungary, Constitution, Dec. 21, 1867, sec. 1 (a); Belgium, Constitution, Feb. 7, 1831, Art. 68; Netherlands, Constitution as amended Nov. 6, 1889, Art. 59; Portugal, Constitutional Charter, April 29, 1826, Art. 75, sec. 8, and amendment, July 5, 1852, Art. 10; Spain, Constitution, June 30, 1876, Art. 55, sec. 4; Switzerland, Constitution, May 29, 1874, Art. 85, sec. 5. See also, Oppenheim, op. cit., 2:546; Kaufmann, op. cit., pp. 33–37

²⁰ S. E. Baldwin, The Part taken by Courts of Justice in the Development of International Law, Am. Law Rev., 35:224. *La construction, Ltd.*, Cour de Cassation, Dec. 22, 1896. Barclay, Companies in France, 2d ed., London, 1899, pp. 20, 95.

²¹ Oppenheim, op. cit., 2:546; Blackstone, Commentaries 1:257; Picciotto, op. cit., p. 61.

²² Holland, op. cit., p. 190; supra, notes, 8, 9.

²² United States Constitution, Art. 6, sec. 2, cl. 2.

visions of such instruments have been applied by both State and Federal judicial and administrative officers, both as a ground of competence ²⁴ and as a rule of decision. ²⁵ The German *Reichsgericht* held in 1885 ²⁶ that "The contents of a treaty, constitutionally concluded with the consent of the Bundesrath and the Reichstag and published, becomes a legal norm binding on the courts." The French *Conseil D'Etat* laid it down in the early nineteenth century that one could not bring an action before it on the ground of a denial of rights guaranteed by treaty, ²⁷ nor demand by contentious litigations the interpretation or application of treaties. ²⁸ As late as 1861 this view was supported on the following reasoning: ²⁹

In principle the existence, the validity, the interpretation and the application of treaties, in their relation to national law and public interest, are outside of the jurisdiction of courts, either administrative or judicial. As the law itself, these treaties are for the protection of all demands, cuias est condere legem, eiusdem est interpretari. Diplomatic acts, whatever they are, proceed only by right of sovereignty. The constitution permits no delegation of this right. It reposes in its entirety in the hands of the supreme executive of the state who alone may exercise it.

And this view is adopted by Pradier-Fodèré, who says that 30

Treaties are before everything, actes du gouvernement. From this point of view they may not be interpreted by any authority except the government itself, represented by the executive power.

- ²⁴ Competence of administrative officers; U. S. v. Robbins, Bee, Admr. 266; Terlinden v. Ames, 184 U. S. 270 (1901), Scott, 436; Tucker v. Alexandroff, 183 U. S. 424 (1901); Ex parte Toscano, 208 Fed. Rep. 938; Competence of Federal courts; Ware v. Hylton, 3 Dall. 199; Hauenstein v. Lynham, 100 U. S. 483; Wildenhus's Case, 120 U. S. 1, Scott, 225. Competence of court limited by treaty: Tellefsen v. Fee, 168 Mass. 188; Succession of Rabasse, 47 La. Ann. 1452.
- ²⁴ U. S. v. The Peggy, 1 Cranch, 109; Geoffroy v. Riggs, 133 U. S. 250, 266 (1889), Scott. 413; U. S. v. Rauscher, 119 U. S. 407 (1886), Scott, 274; Wharton, 2:71.
 - * Urtheil des Deutsches Reichsgerichts, Sept. 22, 1885; Ent. Str. 12:384.
 - 27 Arrêts du Conseil d'Etat, 5:638.
 - 28 Ibid., 3:310, 389, 403, 457, 579; 4:122, 653.
- Dalloz, Juris. Gen., Rept. t. 42 (1861), s. v. Traité Int., No. 152; Ibid., Supt. t. 17 (1896), s. v. Traité Int., No. 15.
- ³⁰ Pradier-Fodèré, *Traité de Droit International Public*, 8 vols., Paris, 1885–1906, 2; sec. 1172.

Yet other decisions of both the *Conseil d'Etat* and the *Cour de Cassation*, laid down perhaps in times of less monarchical domination, assume a reverse position. The former in 1839 thus explained the effect of treaties.³¹

The execution (of treaties) * * * devolves not on a single authority, but on all, according to their competence. The execution belongs to diplomacy, when a principal treaty demands accessory conventions—the execution can be confided to the army if it can be accomplished no other way—the execution will be political if it concerns a treaty of alliance or an act of mediation. It can require the co-operation of the administration, if the acts are of that kind. Thus, for example, postal conventions will be executed under direction of the postal department. It must be finally admitted that the judicial authority will have its part in the execution of treaties if on occasion there arise private controversies which are in its competence, such as questions of property, of family, of succession, or others of that kind.

In the same year the Cour de Cassation held that 32

Treaties between nations are not simply administrative and executive acts; they have the character of law, and can be applied and interpreted only by the authorities charged with applying all the laws, according to their authority. The courts have the right of interpreting treaties, whenever controversies which require such interpretation have for their object, interests within their (the courts) jurisdiction.

The Swiss Constitution ³⁸ gives the *Bundesgericht* jurisdiction of complaints by private individuals against decisions and orders by Cantonal officers in violation of the provisions of treaties, and that court ³⁴ has affirmed its competence whether the treaty in question is with the Swiss Bund or an individual Canton. In England prize courts have affirmed their duty to apply all appropriate treaties, ³⁵ although it seems to have been assumed that an enabling act was necessary to give the

²¹ Ord. Conseil d'Etat, March 27, 1839; Dalloz, Juris. Gen., Rept., t. 42, s. v. Traité Int., No. 131.

¹² Cour de Cassation, June 24, 1839, Dalloz, Juris. Gen., Rept., t. 42, s. v. Traité Int., No. 154.

³³ Swiss Constitution, May 29, 1874, Art. 113, cl. 3; Bundesgesetze uber Organization der Bundesrechtspflege, Art. 59.

¹⁴ Urtheil des Schweiz Bundesgericht, Jan. 30, 1892, Ent., 18:203.

³⁵ The Chile, L. R. (1914), p. 212; Picciotto, op. cit., p. 42.

Declaration of London validity.³⁶ But as to the other courts, Blackstone's ³⁷ assertion that treaties ratified by the Crown are law throughout the kingdom has not been in accord with practice. It was said by the Privy Council in Walker v. Baird: ³⁸

The learned Attorney-General who argued the case before their lordships on behalf of the appellant, conceded that he could not maintain the proposition that the Crown could sanction an invasion by its officers of the rights of private individuals whenever it was necessary in order to compel obedience to the provisions of a treaty.

The court did not find it necessary to pass on the question he did present, whether such a power would exist in pursuance of a treaty of peace or a treaty to avert a probable war. In fact, the incapacity of English courts to apply treaties immediately is so well known that the United States Supreme Court took occasion to animadvert to it in the case of U. S. v. Rauscher: ⁸⁹

Turning to seek in judicial decision for authority upon the subject, as might be anticipated we meet with nothing in the English courts of much value for the reason that treaties made by the Crown of Great Britain with other nations are not in those courts considered as part of the law of the land, but the rights and the duties growing out of those treaties are looked upon in that country as matters confided wholly for their execution and enforcement to the executive branch of the government.

This very notoriety of the British practice, however, makes it incumbent on states concluding treaties with Great Britain to take cognizance of it, and so to regard the passage of an enabling act as a necessary step in the definitive completion of a treaty.⁴⁰

Kaufmann summarizes the practice of courts at present as follows: 41

- ²⁶ After failure of the Naval Prize Bill of 1911, the Declaration of London was not ratified, but probably would have been binding in prize courts if it had been, even in the absence of the Parliamentary sanction. (Picciotto, op. cit., p. 63), and possibly in other courts. See Bentwich, The Declaration of London, p. 126.
 - ³⁷ Blackstone, Commentaries, 1:257.
- ³⁸ Walker v. Baird, L. R. (1892), A. C. 491. See also Sir Robt. Phillimore's opinion in the *Parlement Belge*, L. R. 4 P. D. 129 (1879), and Picciotto, op. cit., pp. 67, et sea.
 - 39 U. S. v. Rauscher, 117 U. S. 407.
 - 40 Supra, note 13.
 - 11 Kaufmann, op. cit., p. 93.

Today in all civilized countries, especially in those of a more or less widely extended circle of relations, according to municipal law norms, the recognition, application and interpretation of the provisions of treaties are immediately affairs of the courts and it is possible for parties to appeal in legal manner to the courts themselves on the determinations of treaties and on general international law principles.

Although this seems to go rather farther than the authorities warrant, especially with reference to France and Great Britain, there undoubtedly is a tendency to recognize the immediate applicability of ratified treaties in all states.

The change in the constitutional organization of states does not, however, alone account for the contradiction which has arisen between the power of ratifying and the power of giving complete effectiveness The change in the character of treaties themselves has added to this result. With the increase in means of transportation and intelligence, immigration, travel and commerce have brought about in both customary and conventional international law a wider range of relations between subject and subject. Where formerly treaties dealt largely with acts to be performed by the state as a whole or by its army or navy, now the continuing rights of individuals and the continuing duties of officers to aid in various kinds of international co-operation have come into prominence. Formerly states were almost the only subjects of conventional international law; now individuals and public officers are very frequently the immediate subjects of treaty stipulations. This evolution has emphasized the distinction which Kaufmann draws between contractual treaties and treaties forming an international legal order. 42 The former contemplate performance by a single authority representing the state, such as the cession of a tract of land or the payment of a sum of money; the latter contemplate a continual administration which may require action by consular, diplomatic, mili-

¹² Kaufmann, op. cit., p. 31. In reference to the latter kind of treaty he says: "The objective legal norms contained in the treaty have force as an international legal norm for and within the entire international society concerned, and, therefore, also within each one of the state societies belonging to it, which in so far are only constituent parts of the internationalen Völkergemeindschaft." Jellinek draws the same distinction, saying of treaties of the latter class, "Such unions are not in the character of contracts, for they shape no jus intra partes but a jus supra partes." System des subjectiven Offentliche Rechtes, pp. 195–196.

tary, or other specified administrative or judicial authorities. The former affects the state as a whole, the latter affects individual rights and duties. This distinction, therefore, is equivalent to that which British jurists have drawn, in asserting that treaties of the latter class always require the assent of Parliament.⁴⁸ The distinction is also the same as that familiar in American jurisprudence between executed and executory treaties. The latter, according to Justice Iredell in Ware v. Hylton, may require action by any of the three departments of government, legislative, executive or judicial.⁴⁴

With the increased prominence of treaties of the latter class, the constitutional questions connected with their performance have become important. The functions of public officers or of entire departments of government may have to be enlarged or diminished, or the creation of new offices may become necessary by the terms of such treaties. So also the private rights of subjects or aliens may be greatly affected. It would seem that there ought to be in each state some recognized process of ratification of treaties, which when once accomplished by all the signatory states would give the treaty legal validity for all persons and public officers whose co-operation is necessary for its continual performance. To this effect, Secretary of State Livingston said in 1831: 45

⁴³ Some British writers have drawn the distinction between treaties made in consequence of war and those made in time of peace, asserting that the former alone are valid without an act of Parliament. (Maitland, Constitutional History of England, Cambridge, 1909, p. 424.) Actual practice, however, seems to show that the distinction lies between treaties which affect private rights and those which do not. Thus Phillimore in the Parlement Belge, L. R. (1879), 4 P. D. 129, says: "The strongest instance of the latter, perhaps, which could be cited is the Declaration of Paris of 1856, by which the Crown in the exercise of its prerogative deprived the country of belligerent rights which very high authorities in the state and in the law considered to be of vital importance to it. But this declaration did not affect the private rights of the subject, and the question before me is whether this treaty does affect private rights and therefore required the sanction of the legislature." See also Sir W. Anson, Law and Custom of the Constitution, 3rd ed., Oxford, 1908, 3:103; Westlake, Collected Papers, p. 518; Picciotto, op. cit., p. 61, et seq.

⁴⁴ Justice Iredell laid down this distinction in a dissent in the case of Ware v. Hylton, 3 Dall. 199 (1796), in which he assumed the British view that executory treaties require sanction of the legislature.

⁴⁵ Mr. Livingston, Sec. of State, to Mr. Serurier, June 3, 1833, Wharton, 2:67. See also U. S. v. The Peggy, 1 Cranch, 109.

The Government of the United States presumes that whenever a treaty has been duly concluded and ratified by the acknowledged authorities competent for that purpose, an obligation is thereby imposed upon each and every department of the Government to carry it into complete effect, according to its terms, and that on the performance of this obligation consists the due observance of good faith among nations

This condition, however, is not in fact entirely attained in any state. Ratification and exchange of ratifications must always be interpreted with reference to the constitutional competence of the authorities performing that act. The actual bringing into complete existence of the international legal order, even after exchange of ratifications, may require various acts in the different states according to the nature of the objects contemplated by the treaty.46 Thus even in the United States all treaty provisions are not immediately applicable by all appropriate governmental authorities. Courts, for instance, cannot interpret treaty boundary provisions but must regard them as "political questions" and follow the determinations of the political departments of government. 47 So also they apparently cannot take cognizance of crimes specified in treaties, unless Congress has first acted. In a number of early treaties, American citizens accepting letters of marque to cruise against the other signatory while at peace with the United States were declared to be punishable as pirates, but in dicta the Supreme Court doubted whether an indictment would be supported in the Federal courts under such provisions.⁴⁸ The Secretary of the Treasury cannot be compelled to disburse funds on the basis of a treaty alone, 49 and probably no officer can execute a treaty requiring a payment of money unless Congress has acted.50

- 46 Kaufmann, op. cit., p. 33.
- 7 Foster v. Neilson, 2 Pet., 253.
- ⁴⁸ The Bello Corrunes, 6 Wheat. 152. Letter of Secretary of State Marcy referring to a proposed treaty with Venezuela of this character, Moore, 2:978.
- ³⁰ Frelinghuysen v. Key, 110 U. S. 64; L'Abra Silver Mining Co. v. U. S., 175 U. S. 423.
- so To do so would be in conflict with the constitutional provision that "no money shall be drawn from the treasury but in consequence of appropriations made by law," Art. 1, sec. 9, cl. 7. There has been some question of the internal validity of commercial treaties affecting the tariff without the assent of Congress, and the practice has been to get such assent. The courts, however, seem to sanction the contrary

In England the difference is simply one of degree. Ratification by the Crown in council has validity in constitutional law for matters within the cognizance of prize courts ⁵¹ and for matters within the prerogative, which includes the making of political alliances, war and peace, and for all matters incidental to that end, such as the cession of territory. ⁵² It is doubtful whether territory may be ceded in time of peace without the consent of Parliament, at least the treaty ceding Heligoland to Germany was made specifically dependent on Parliamentary consent. ⁵³ Treaties requiring an appropriation and treaties affecting private rights cannot be executed without an act of Parliament. ⁵⁴

Conventional international law, therefore, the same as customary international law, furnishes an immediate source of law for courts, in very different degrees according to the subject-matter it covers. No general statement can be made of any country. In all, some treaty provisions are applicable by courts, some are not. As was said by a French court: 55

In reference to matters submitted by international law to the local jurisdiction, such as those concerning property and its transmission,

view that the treaty-making power can alter customs rates. Bartram v. Robertson, 122 U. S. 116 (1887); Whitney v. Robertson, 124 U. S. 190 (1888); Corwin, op. cit., p. 11.

- ⁶¹ The Chile, L. R. (1914) P. 212. In the Parlement Belge, L. R. (1879), 4 P. D. 129, Sir Robert Phillimore conceded that the Declaration of Paris was applicable by prize courts, although not sanctioned by Parliament and thought by many to have deprived England of vitally important belligerent rights. Picciotto, op. cit., pp. 42, 68.
- ⁵² Maitland, Constitutional History of England, p. 424; Halsbury, Laws of England, 6:440.
- ¹³ Convention with Germany of 1890. Parliamentary assent was given by 53–54 Vict., c. 32. The same course was followed in the case of some cessions to France in 1904. Picciotto, op. cit., p. 63.
- Walker v. Baird, L. R. (1892), A. C. 491; the Parlement Belge, L. R. (1879), 4 P. D. 129; Westlake, Collected Papers, p. 518; Holland, op. cit., p. 190; Halsbury, The Laws of England, 6:440, note (2); W. Harrison Moore, Act of State in English Law, New York, 1906, pp. 83–92, 132–135. Picciotto, op. cit., p. 71, goes to the extent of saying that "so difficult to draw is the line between those treaties which affect private rights and those which do not, and so difficult is it to imagine a treaty which does not, that in most cases the passing an act by the legislature would seem the correct and advisable course."
 - 55 Dalloz, Juris. Gen., Supt., t. 17, s. v. Traité Int., No. 17.

or concerning citizens subject to jurisdiction by reason of their nationality, the French courts ought to consider such treaties as laws, which they have the power and the right to interpret. Concerning on the contrary matters in which the public order or the law of nations is interested, the interpretation of treaties is not within the competence of judges, whoever they are, because their decisions might constitute a derogation from the right of sovereignty of the nation with which the convention is existing.

We will therefore, very briefly consider the applicability of treaties by courts in various fields, as furnishing an immediate source of (1) jurisdiction, and (2) rule of decision.

2. ASSERTION OF JURISDICTION FROM TREATY PROVISIONS

Courts will generally decline to consider whether or not a treaty is valid, regarding it as a political question. Thus the court, if competent to take cognizance of the treaty at all, will generally accept the executive promulgation as conclusive evidence that the necessary steps of signature, ratification and exchange of ratifications have been completed. Courts have, however, interpreted the exact time in which ratified treaties take effect. In the United States it has been held that private rights are affected only from the date of executive proclamation, but the international responsibility is engaged from the date of signature if the treaty has been subsequently ratified. In England where the enabling statute rather than the treaty really furnishes the rule for the court, private rights are of course only altered from the date designated by that instrument.

The abrogation of a treaty is also regarded as a political question.

- In the United States, proclamation by the President renders the treaty executable by the courts, Foster v. Neilson, 2 Pet. 314; U. S. v. Arredondo, 6 Pet. 725; Cushing, Att. Gen., 6 op. 750, (1854); Moore, 5:202. In Germany, publication in the Reichsgesetzblatt is conclusive, Picciotto, op. cit., p. 59. In France the Conseil d'Etat has held that it will not pass on the existence or validity of a convention, Arrêt du Conseil d'Etat, 6:104.
- ⁵⁷ U. S. v. Arredondo, 6 Pet. 691; Haver v. Yaker, 9 Wall. 32; Davis v. Concordia, 9 How. 280; Hylton v. Brown, 1 Wash. C. C. 343. Where legislative action is necessary, private rights are not affected until that has taken place, Foster v. Neilson, 2 Pet. 253; U. S. v. Percheman, 7 Pet. 54; Bartram v. Robertson, 15 Fed. Rep. 212; Wharton, 2:27.
- ⁸⁸ U. S. v. Reynes, 9 How. 127; Davis v. Concordia, 9 How. 280; Haver v. Yaker, 9 Wall. 32.

A treaty once entered into has been held by courts of the United States to continue in force for the judiciary until abrogated by a positive act of the political authorities. Abrogation or infraction by other signatories is not subject to judicial cognizance, although it might furnish just international grounds for an abrogation by the political authorities. Thus the necessary and voluntary validity of treaties have been distinguished, the former referring to the obligation imposed on all branches of the government because of the legal ratification of the treaty, the latter to the voluntary continuance of the treaty by the political authorities, even after violation by the other signatory has given sufficient grounds for abrogation. ⁵⁹

All treaties once ratified, until abrogated contain in theory valid international law in the sense that a failure on the part of either government or its officers to perform duties required by the treaty or to enforce rights guaranteed by it, would give a cause of diplomatic reclamation. Whenever, therefore, functions of courts are specified in treaties, the establishment of such courts, or the extension of the jurisdiction of courts already existing, is an obligation required by positive international law.

A few examples will show how treaties have specified the functions of courts. Many bilateral treaties as well as law-making conventions have required the adjudication of all prizes of the signatories in prize courts. The railroad convention of Berne of 1890, 1 not only gives the law of railroad claims, but states that courts must settle them according to a defined procedure and which courts are competent. The various Rhine and Danube navigation conventions have required courts of first and second instance to assume jurisdiction of tariff controversies, and requires them to be under oath to apply the international rules agreed to by the riparian states. By the various international copy-

⁵⁰ Jones v. Walker, 2 Paine, 688; Wharton, 2:34.

[∞] The United States has concluded twenty such treaties with fourteen countries, of which those with Bolivia (1858, Art. 24, Malloy, p. 121) and Colombia (1846, Art. 24, Malloy, p. 309), are in force. One of the Hague Conventions of 1907 provided for the establishment of an international prize court to which prize cases must be submitted on appeal, but this has not been ratified.

⁶¹ Convention of Berne, Oct. 14, 1890, Martens, N. R. G. ii, 19:289.

⁵² Rules of Congress of Vienna, with reference to the Rhine, June 9, 1815, Arts. 108-117, Martens, N. R., 2:379; Mainz Convention, March 31, 1831, *ibid.*, N. R.,

right and patent treaties foreign authors and inventors must be given the same right of action in the courts of all signatories as is given to nationals.⁶³ The French-Swiss treaty of 1869 concerning jurisdiction and the effect of judgments, forbids courts of either state to refuse jurisdiction of suits on the ground that the plaintiff is an alien.⁶⁴ Under such specific prescriptions as these courts of most states have generally assumed jurisdiction of cases even in the absence of express statutory authority relating to that particular matter.

The United States Constitution ⁶⁵ and statutes ⁶⁵ give Federal courts jurisdiction of all cases arising under treaties, consequently their jurisdiction ordinarily extends automatically on completion of the treaty. In criminal matters, however, some doubt has arisen. The authority of executive officers to perform extradition on the strength of treaties alone has been upheld, but in this, as well as in the assistance of foreign consuls exercising extraterritorial jurisdiction over seamen, there seemed to be doubt of the competence of the courts, ⁶⁷ so statutes have been

- 9:252; Mannheimer Orders, Oct. 17, 1868, *ibid.*, N. R. G. ii, 4:599; Danube Regulations, Nov. 2, 1865, de Clercq, 9:384; June 2, 1882, Martens, N. R. G. ii, 9:394.
- ⁶³ Copyright treaty of Berne, Sept. 9, 1886, Art. 2, Martens, N. R. G. ii, 12:193; Treaty of Paris for protection of Industrial Property, March 20, 1883, *ibid.*, N. R. G. ii, 30:449; Montevideo treaties, copyright, Jan. 11, 1889, Arts. 2, 4, 11; Trade Mark, Jan. 16, 1889, Arts. 1, 4; Patents, Jan. 10, 1889, Arts. 1, 6, *ibid.*, N. R. G. ii, 18; 418, 453, 421.
 - 64 French-Swiss treaty, June 15, 1869, de Clercq, 10:289.
 - ⁸⁵ United States Constitution, Art. 6, sec. 2, cl. 2.
- ⁶⁰ The judiciary act of Sept. 24, 1789, 1 Stat. 76, 85, gave Federal district courts original jurisdiction of suits brought by aliens for torts only in violation of the law of nations or of treaties of the United States, and the Supreme Court appellate jurisdiction where a right claimed under a treaty was denied by the State court having final jurisdiction of the case. An act of Aug. 13, 1888, 25 Stat. 433, gave district courts original jurisdiction of civil suits arising under treaties where the amount involved was \$2,000, and also provided for the removal of such suits to Federal courts if begun in State courts, on motion of the defendant. Federal Judicial Code of 1911, 36 Stat. 1087, sec. 24, cl. 1, 17, secs. 28, 237.
- ⁶⁷ On habeas corpus a Federal district court refused to release an alleged murderer held for extradition by authority of President Adams, according to the Jay Treaty of 1794 with Great Britain, U. S. v. Jonathan Robbins, Bee, Admr. 266. The right of the executive to make arrests for extradition was also upheld in the case of the British Prisoners, 1 Wood & Min. 66, but Justice Woodbury said, "If a treaty stipulated for some act to be done entirely judicial, * * * it could hardly be done without the aid of preliminary direction of some act of Congress prescribing the court

passed supplementary to such treaties.⁶⁸ Although treaties have sometimes provided for the punishment of certain crimes, the usual view has been that criminal jurisdiction cannot be founded on treaties alone any more than on customary international law, in Federal courts.⁶⁹

The Swiss Constitution ⁷⁰ expressly gives the *Bundesgericht* jurisdiction of complaints of private individuals against decisions and orders of Cantonal officers for violations of treaty provisions, and the court has held that its jurisdiction extends whether the treaty is with the Swiss Bund or an individual canton.⁷¹ It also exists whether the complainant is a subject of the foreign state or of Switzerland.⁷²

In Germany there is no constitutional provision, but the practice of courts seems to countenance the extension of jurisdiction in accord with treaty provisions. Thus the *Riechsgericht* laid it down in 1885 that ⁷³ "The contents of a treaty constitutionally concluded with the consent of the *Bundesrath* and *Reichstag* and published becomes a legal norm binding on the courts."

Upon this basis it held that an extradition treaty naming certain extraditable crimes which were also indictable in Germany, superseded the local law by its own force and the party must be extradited rather than punished in Germany. There have, however, been exceptions. The Reichsgericht refused jurisdiction of a complaint based on an infraction of a tariff treaty where the administration of the tariff was in the hands to do it and the form." In the Metzger case, 5 How. 176 (1847), the court released a prisoner held for extradition, on the ground that the treaty had not been put in force by act of Congress. Corwin, op. cit., pp. 278–279. For opinion that United States officers cannot aid foreign countries in returning deserting seamen without an enabling act of Congress, see Moore, 2:298.

- Stat. 83, Rev. Stat., sec. 5270-5280. Acts providing for return of deserting seamen: Rev. Stat., sec. 5280-5281, and issuance of judicial process on request of foreign consul vested with extraterritorial jurisdiction by treaty, act June 11, 1864, 13 Stat. 12; Judicial Code of 1911, 36 Stat. 1187, sec. 271.
- ⁶⁹ The Bello Corrunes, 6 Wheat. 152 (dicta); letter of Mr. Marcy, Sec. of State, Moore, 2:978; supra, note 48.
- ⁷⁰ Swiss Constitution, May 28, 1874, Art. 113, cl. 3; Bundesgesetze uber organization der Bundesrechtspflege, Art. 59.
 - 71 Urtheil des Schweiz Bundesgerichts, Jan. 30, 1892; Ent., 18:203.
- ¹³ Bundesgesetze uber organization der Bundesrechtspflege, Art. 59; Urtheil des Schweiz Bundesgerichts, Dec. 3, 1881, Ent., 7:782.
 - 7 Urtheil des Deutsches Reichsgerichts, Nov. 22, 1885; Ent., Str. 12:384,

of State rather than Imperial officers.⁷⁴ In theory it admitted the right of judicial recourse in such cases, but inasmuch as most of the customs administration in Germany is by State officers and such recourse under Imperial treaties does not exist in most State courts, including those of Prussia, the decision in reality amounted to a denial of judicial relief in such cases. The decision is remarkable, because in general the supremacy of national treaties over State laws is recognized in Germany as in the United States.⁷⁵

In France no constitutional provision extends jurisdiction, but, as has been stated, the courts have sometimes asserted that treaties are immediately applicable, although this view has not been uniform. Thus the *Cour de Cassation* in 1811 asserted that ⁷⁶

Treaties validly signed and promulgated are true laws, which obligate the two countries between which they have been concluded. In consequence within the courts of the two countries treaties are as obligatory as statutes themselves.

Other decisions, however, especially of the Conseil d'Etat, as well as the opinions of text-writers, seem to make it doubtful whether courts can extend their jurisdiction according to treaty provisions. French courts have certainly been inclined to interpret treaty provisions as political questions or actes du gouvernement, and hence not within their cognizance. In a number of cases the Conseil d'Etat has laid it down that a person cannot maintain a contentious action in that court on the grounds of a denial of rights based on treaty. There appears, however, to be a tendency to narrow the interpretation of actes du gouvernement and to assume jurisdiction on the basis of treaty provisions specifically conferring it. 78

⁷⁴ Urtheil des Deutsches Reichsgerichts, July 1, 1881; Ent., Civ. 5:34; Kaufmann, op. cit., p. 98.

⁷⁶ Kaufmann, op. cit., p. 53.

⁷⁶ Cour de Cassation, July 13, 1811, Dalloz, Juris. Gen., Rept., 1853, t. 30, s. v. Lois, No. 91. In the case of the Tempest, Sirey, n. s., 1859, 189, Scott, 229, the Cour de Cassation assumed jurisdiction of an assault upon a United States merchant vessel in port at Havre, on the ground that the assault disturbed the peace of the port, which made it subject to French jurisdiction by the treaty with the United States of 1853.

⁷⁷ Arrêt du Conseil d'Etat, 5:638; Dalloz, Juris. Gen., Supt., t. 17, s. v. Traité Int., No. 16. Pradier-Fodèré, Droit International, 2; secs. 1172-1173.

⁷⁸ On the status of actes du gouvernement see J. W. Garner, Judicial Control of Ad-

In England, where the distinction between the exchange of ratification of treaties and power of internal execution is most sharply drawn, it does not seem that jurisdiction can ever be founded on treaty provisions alone, except in prize courts. Courts will generally refuse to take cognizance of a treaty until made effective by an act of Parliament.⁷⁹

A recent case, however, throws some doubt on this assertion.⁸⁰ An alien enemy had brought suit before the Court of Appeal, claiming that right under an article of the Hague Conventions of 1907,⁸¹ which forbade a state to "declare abolished, suspended or inadmissible the right of the subjects of the hostile party to institute legal proceedings." This provision appears to be in direct opposition to the common law rule refusing an alien enemy any status in court. The court discussed the conflict at length and finally decided that it could not found jurisdiction on the treaty provision because by its context it should be interpreted as applying only to territory under military occupation. It is noteworthy, however, that the court actually took cognizance of the convention and offered an interpretation of it, implying that it was to be regarded a rule of British law in cases where applicable.

It would seem that in theory the extension of jurisdiction by national courts in accordance with treaty provisions would always be possible, for the rule of the treaty itself renders the case justiciable, while the express grant of authority in that instrument renders it enforceable at law.

3. LIMITATIONS OF JURISDICTION FROM TREATY PROVISIONS

Courts of states which permit the immediate application of treaties as law, have recognized limitations of jurisdiction contained in such ministrative and Legislative Acts in France, A. P. S. Rev., 9:637, 653-655, who states that "the conclusion and execution of treaties" are within that class; and E. M. Borchard, Diplomatic Protection of Citizens Abroad, N. Y., 1915, pp. 131-132.

⁷⁹ Supra, note 54.

²⁰ In re Mertens Patents, 112 L. T. 313 (1915); Picciotto, op. cit., p. 73.

⁸¹ Hague Conventions, 1907, IV, Annex, Art. 23, h. This provision has been variously interpreted and vigorously criticized, especially by Professor Holland, who describes it as "apocryphal." (Laws of War on Land, Oxford, 1908, p. 44) and submits that it is "incapable of rational interpretation and should be so treated by the Powers," but if valid at all, he thinks the British interpretation should prevail. Letters to the Times on War and Neutrality, London, 1914; Letter, Nov. 6, 1911; Article 23(h), Law. Quar. Rev., 28:94.

instruments. Examples of such treaty exemptions, are those of foreign seamen, for acts not disturbing the peace of the port, and of consulates.

The recognition of such treaty exemptions from jurisdiction is in accord with the practice of courts in the United States, Switzerland and Germany.⁸² In France the power of treaties to deprive Frenchmen of a right of judicial relief guaranteed by the civil law seems doubtful. Carré, in his work on administrative law, states a hypothetical case 83 in which a convention is supposed to provide for the construction of a bridge between France and an adjacent state by the former, to be paid for by assessment on the communes and property-holders benefited. In his opinion, the competent court to assume jurisdiction in suits involving such assessments or incidental injuries to property would be determinable by the civil law, even if the convention expressly gave a different "Is it certain," he asks, "that a convention of this kind which proposes regulations of competence is obligatory for the litigants? I doubt it. But as to third parties, whose rights would be injured by the execution of the work, I do not believe that it would be possible to deny them their natural jurisdiction." In the case of England, it is clear that ratified treaties cannot furnish an immunity from the operation of laws intended by Parliament to act on all alike. In the case of the

⁸² In Tellefsen v. Fee, 160 Mass. 188, the court refused jurisdiction on the ground that the matter, seaman's wages, was by treaty put within the exclusive jurisdiction of a foreign consul, and in the case of Rabasse, 47 La. Ann. 1452, the court refused to appoint an attorney for absent heirs, as provided by the Louisiana Code, on the ground that in this case the code provision was superseded by a treaty giving the consul exclusive jurisdiction of the administration of such estates. New York courts made similar decisions in the Matter of Lobrasciano, 38 Misc. Rep. 415, and the Matter of Fattosini, 33 Misc. Rep. 18. See Corwin, op. cit., pp. 193-194. In Wildenhus's case, 120 U.S. 1, Scott, 227, the treaty immunity of foreign merchant vessels in some respects is discussed, but in this case jurisdiction of a crime committed on a Belgian vessel was assumed on the ground that it was of such gravity as to disturb the peace of the port. France has also recognized the treaty immunity of foreign merchant vessels. Thus, on the basis of the treaty with the United States of 1788 jurisdiction of assaults on American vessels in French ports was refused in the cases of the Sally and the Newton, Conseil d'Etat, 1806, Dana's Wheaton, sec. 103, p. 164, Scott, 227; but in the Tempest, Sirey, n. s. 1859, 189, Scott, 229; by the provision in the treaty with the United States of 1853 admitting the local jurisdiction of acts disturbing the peace of the port, jurisdiction was assumed by the Cour de Cassation. ⁸³ G. L. J. Carré, and C. Adolphe, Lois de la Procedure Civile et Commerciale, 11

Vols., Paris, 1886, 11:78.

Parlement Belge, 84 a Belgian public vessel, used however for mail and passenger service, and libelled for damages on account of a collision in the Thames, the counsel for the libellee in the Admiralty Division of the High Court attempted to prove the immunity of the vessel on account of a convention between Great Britain and Belgium conferring a public character on the vessel. Sir Robert Phillimore for the court ruled against this contention and declared the vessel liable, saying that conventions affecting private rights are not subject to the cognizance of the court until Parliament has sanctioned them. On appeal 85 the decision was reversed, but on the ground that as property of the King of Belgium the vessel was immune by customary international law. No decision was given on the application of the convention and apparently the view of the court below was sustained on this point. This interesting decision, therefore, seems to show that customary international law enjoys a greater legal validity in England than conventional international law.

4. APPLICATION OF TREATY PROVISIONS AS A RULE OF DECISION

As a rule of decision, conventional international law may frequently be applied by courts, either while exercising an administrative jurisdiction to determine the competence of public officers, or while exercising a civil or criminal jurisdiction to determine the rights of private persons. Treaties have given public officers competence to perform such functions as interning belligerent troops and war ships violating neutrality, senforcing customs and navigation rules, a sasisting in various branches of international administration, such as the international postal, telegraphic, radio-telegraphic, and quarantine services, and assisting foreign governments by extraditing criminals and returning deserting seamen. Courts of the United States, Switzerland, Germany, and to a

⁸⁴ The Parlement Belge, L. R. (1879), 4 P. D. 129; Baldwin, op. cit., Am. Law Rev., 35:224; Picciotto, op. cit., p. 67.

⁸⁵ The Parlement Belge, L. R. (1880), 5 P. D. 197.

⁸⁶ Hague Conventions, 1907, V, xiii.

⁸⁷ For Rhine and Danube Conventions, see Kaufmann, op. cit., pp. 17, 117–119; supra, note 62.

 $^{^{\}infty}$ On these and similar conventions, see P. S. Reinsch, Public International Unions, Boston, 1911.

^{*} Practically all countries have concluded bi-lateral extradition treaties with other

less extent France, with an acknowledged competence in the case, have applied treaties as a rule of decision in exercising an administrative jurisdiction over such officers. Thus in the United States the competence of officers, acting under direction of the President, to arrest and intern Mexican soldiers violating American neturality, was upheld on habeas corpus, on the ground that one of the Hague Conventions furnished such competence; 90 and in a number of cases involving customs administration treaties have furnished the rule of decision. 91 Some early cases supported the right of police officers to make arrests for extradition or return of deserting seamen on application of the foreign consul, supported by treaty alone, 92 but such competence is now conferred by statute.93 In continental Europe the competence of courts to assume administrative jurisdiction on the basis of an alleged violation of treaty rights has not been uniformly supported, but where such jurisdiction has been exercised, the treaty provision has furnished the rule of decision. 94 In England it is clear that treaties cannot furnish the rule of decision in determining the competence of officers. Thus in Walker v. Baird 95 the authority of a naval officer to restrain the operation of a lobster factory in Newfoundland was denied and Walker, the officer, was found liable for trespass, even though his act was performed in pursuance of a convention between Great Britain and France, with the execution of which Walker had been entrusted by the Admiralty.

The private rights regulated by treaty cover a wide field, including such matters as the right of aliens to own, transmit, and inherit property, to engage in commerce and business, and to enjoy the civil rights

states. Commercial and consular treaties generally provide for the return of deserting seamen on application of the consul.

- ⁹⁰ Ex parte Toscano, 208 Fed. Rep. 938.
- ⁹¹ Nichols v. U. S., 7 Wall. 122; Schillinger v. U. S., 155 U. S. 163; Campbell v. U. S., 88 U. S. 407.
- ²² U. S. v. Robbins, Bee, Adm. 266; Case of the British Prisoners, 1 Wood & Min. 66. For recent cases supporting the authority of executive officers to make arrests in pursuance of treaty, see, for extradition, Terlinden v. Ames, 184 U. S. 270 (1901), Scott, 436, and for return of deserting seamen, Tucker v. Alexandroff, 183 U. S. 424, 437.
 - 23 Supra, note 68.
 - 94 Kaufmann, op. cit., p. 86, et seq.
 - 95 Walker v. Baird, L. R. (1892), A. C. 491.

of nationals. General international agreements have given such rights as those of copyright, trade mark, and patent protection in foreign countries, while international law-making conventions have defined many of the rights and duties of the subjects of neutral and belligerent states in time of war. Such rights as these are appropriate for judicial application and have been applied by courts as a rule of decision in countries where treaties form an immediate source of law.

In the United States the application of treaties to protect the rights of aliens to own real estate, ⁹⁶ to inherit property, ⁹⁷ to be free from confiscation of property, ⁹⁸ and to engage in labor, ⁹⁹ have been upheld even when in conflict with state statutes. United States courts have also applied the provisions of treaties in trying persons received by extradition, ¹⁰⁰ and in administering customs claims, ¹⁰¹ claims based on treaties ceding territory to the United States, ¹⁰² and in prize cases. ¹⁰³

In Switzerland, the *Bundesgericht* held that a treaty with France, providing that the minor children of French parents naturalized in Switzerland, should be permitted to retain French citizenship, superseded an earlier Swiss statute by its own effect, ¹⁰⁴ and the same court has applied the rule of a number of extradition treaties even when in opposition to a statute passed subsequently to the ratification of the treaty. ¹⁰⁵

The German Reichsgericht held in 1891 108 that the copyright treaty

- Hauenstein v. Lynham, 100 U.S. 483.
- 97 Chirac v. Chirac, 2 Wheat. 259.
- Ware v. Hylton, 3 Dall. 199.
- ⁵⁹ This right of resident aliens has been upheld under the constitutional guarantee of "equal protection of the laws," Yick Wo v. Hopkins, 118 U. S. 356, 369, though treaty guarantees have sometimes been mentioned incidentally, Truax v. Raich, U. S. Sup. Ct. (1915), A. J. I. L., 10:158.
 - 100 U. S. v. Rauscher, 119 U. S. 407 (1886), Scott, 274.
 - 101 Whitney v. Robertson, 21 Fed. Rep. 566.
- ¹⁰² U. S. v. Moreno, 1 Wall. 400, Scott, 666; Strother v. Lucas, 12 Pet. 436; U. S. v. Arredondo, 6 Pet. 691.
 - 103 The Nereide, 9 Cranch, 388; Moodie v. The Phoebe Anne, 3 Dall. 319.
 - ¹⁰⁴ Urtheil des Schweiz Bundesgerichts, April 21, 1882, Ent., 8:275.
- 106 Ibid., June 17, 1892, Ent., 18:193; March 17, 1893, 19:129, 136; Oct. 21, 1896, 22:450; Dec. 15, 1896, 22:1030; Feb. 15, 1894, 20:57; March 15, 1894, 20:61; July 17, 1894, 20:343; Sept. 18, 1895, 21:739; March 2, 1895, 21:79. For discussion of these cases see Kaufmann, op. cit., p. 83.
 - 106 Urtheil des Deutsches Reichsgerichts, Nov. 23, 1891, Ent. Str., 22:261.

with France of 1883 superseded a German statute of 1870, and of its own force deprived a German subject of his right, valid under the German law, to publish a French musical work.

As has been stated, in France, both the Cour de Cassation and the Conseil d'Etat have in a number of cases involving private rights applied treaties as a rule of decision, the former asserting that 107 "The courts have the right of interpreting treaties, whenever controversies which require such interpretation have for their object interests within their (the courts') jurisdiction." But this view has been by no means uniform, and it seems that the Cour de Cassation has been more willing to admit the applicability of treaties than the Conseil d'Etat. Thus the latter has held in a number of opinions that a person cannot demand the interpretation or application of treaties in that court. 108

In England the usual rule has been to deny the applicability of treaty provisions as a rule of decision except in prize courts, ¹⁰⁹ although a recent decision of the Court of Appeal ¹¹⁰ in reference to the right of an alien enemy to sue on the strength of the Hague Convention relating to land warfare ¹¹¹ seems to throw some doubt on this contention. The court did not apply the provision in question, but refused to do so,

107 Cour de Cassation, June 24, 1839, Dalloz, Juris. Gen., Rept., t. 42, s. v. Traité Int. No. 154. See also supra, note 29 et seq. In trying persons extradited from abroad, the Cour de Cassation has applied treaty provisions in upholding the view of the United States Supreme Court in United States v. Rauscher, 119 U. S. 407, Scott, 274 (1886), that punishment can only be for the offense for which extradition has been given. Dalloz, 1874, 1:502. For cases in which the Cour de Cassation has refused to apply treaties see decision July 4, 1867, Dalloz, 1867, 1:281, in which it was held that extradition treaties were acts of government which were not within the competence of courts to explain and interpret. In a much criticized decision of Dec. 22, 1896 (La Construction, Ltd.) the Cour de Cassation virtually ignored a provision in the treaty with England of Apr. 30, 1862, requiring that "all companies * * * constituted and authorized in conformity with the laws in force in either of the two countries" should exercise all legal rights in the other. The court held that the nationality of a company was to be determined by the place of its principal establishment, and hence the company in question, with its principal office in Paris, although established by English law, was not entitled to the treaty privilege. Barclay, Companies in France, pp. 20, 95.

¹⁰⁸ Arrêt du Conseil d'Etat, 3:310, 389, 403, 457, 579; 4:122, 653.

¹⁰⁰ Supra, note 54.

¹¹⁰ In re Merten's Patents, 112 L. T. 313 (1915); Picciotto, op. cit., p. 72.

¹¹¹ Hague Conventions, 1907, IV, Annex, Art. 23 (h).

not because the treaty was inapplicable, but because it interpreted the provision as applying only to actions brought in territory under military occupation.

Analogous to the application of treaties as a rule of decision, is the application of the regulations and decisions of arbitral courts and other international bodies. In the United States it has been held that such decisions furnish an immediate foundation for private rights, 112 although, as in the case of treaties, such rights may be destroyed by act of Congress. 118 A number of treaties relating to international arbitration have specifically provided that rights founded on such arbitral decisions shall be given the same facilities of execution within the state as would be given to the decision of a local court. 114 The decisions of the mixed international court in Egypt, 116 and the central commission of the Rhine 116 must also according to treaties, be applied by local courts, whenever necessary. Treaties have sometimes even demanded the application and execution of foreign judgments in local courts. Thus the Rhine navigation act 117 provides for the execution of the judgments of courts of the riparian states in other such states, and the Montevideo convention of 1889 118 guarantees the signatories a right of appealing to the judicial authorities of any other signatory to aid in the application of a judgment. So also the Berne Railroad Freight Con-

112 La Ninfa, 75 Fed. Rep. 513. The claim of one Gibbs against New Granada was arbitrated under a treaty of Nov. 10, 1857, and recognized as good. The United States before paying brought it under the new treaty with Colombia of Nov. 10, 1864, whereupon Gibbs protested, asserting that his claim was res adjudicata and must be paid by the United States Government. This assertion was upheld by Attorney General Harmon, 13 Op. 19. In the L'Abra claims where Congress had authorized a resubmission of the claims, the claimants' right was held debarred. See infra, note 113.

- ¹¹³ Frelinghuysen v. Key, 110 U. S. 363; L'Abra Silver Mining Co. v. U. S., 175 U. S. 423; J. W. Foster, The Practice of Diplomacy, New York, 1906, p. 370.
- ¹¹⁴ Article 7 of treaties of Chile with France, Nov. 2, 1882, with Italy, Dec. 7, 1882, with Great Britain, Jan. 4, 1883, with the United States, Aug. 7, 1892, Martens, N. R. G. ii, 9:704, 10:638, 9:445, 22:339.
- ¹¹⁵ Mixed Court of Egypt, Reglement d'Org. Jud., tit. 1, Art. 18, Kaufmann, op. cü., p. 123.
 - 116 Kaufmann, op. cit., p. 123.
 - 117 Rhine Navigation Act. Oct. 17, 1868, Art. 40, Martens, N. R. G. ii, 4:599.
- ¹¹⁸ Montevideo Convention Over International Right of Recourse, June 11, 1889, tit. 3, Art. 5, Martens, N. R. G. ii, 18:415.

vention of 1890 ¹¹⁹ permits local courts to decide certain matters and provides that such decisions shall be executed by the courts of any signatory state without further trial. Under such provisions as these, courts of states which recognize the legal applicability of treaties must also, it would seem, recognize the legal applicability of such decisions and regulations made in pursuance of treaties.

Both treaties and arbitral decisions have sometimes been resorted to by courts as a source from which to determine the practice of nations and from that the rules of customary international law bearing on the case in hand. Such a use of treaties is of course distinct from that just discussed. As evidence of conventional international law, treaties furnish not only a formal and historical but also a juridical source of law. As evidence of customary international law they furnish simply evidence of the usage which constitutes a source of customary international law.¹²⁰

Treaties have thus been an important source of law for courts, but in varying degrees in different states, depending upon the nature of the rule sought to be applied and the extent of sanction it has received from the public officers of the government. Very seldom will a treaty ratified by the executive alone have an immediate legal effect in respect to private rights, except in prize courts, even when such ratification in theory engages the responsibility of the state. In all countries, assent of the legislature through the passage of an enabling act is necessary to give a complete effectiveness to many treaty provisions, especially those requiring an appropriation of money, or demanding a criminal prosecution. Legislative assent is also usually necessary to make legal norms of the provisions of treaties affecting personal or property rights of subjects, the situation in the United States where one branch of the legislature, acting as an executive council, need alone give assent, being exceptional.

With the present embodiment of many principles of general international law in conventions to which most of the important nations

¹¹⁰ Berne Convention, Oct. 14, 1890, Art. 56, Martens, N. R. G. ii, 19:289.

¹²⁰ For an excellent discussion of the relation of treaties to customary international law, see Travers Twiss, Law of Nations considered as Independent Political Communities, Oxford, 1884, 1:167, et seq., and Phillimore, op. cit., 1:48.

are signatory, the application of conventional international law by courts is acquiring increased importance. It should be observed, however, that such conventions are frequently subject to limitations in application. Thus the Hague Conventions relating to the law of war apply in terms only to wars in which all belligerents are signatories, and of course all such conventions are binding only between signatories. 12 There are also frequent provisos attached to ratifications, and some signatories have never ratified at all. Thus the Declaration of London, although signed by the leading naval Powers, has never been ratified. With these limitations, these law-making conventions are treaties of the same legal validity as the usual bi-lateral treaty. Thus a United States court sustained an arrest and internment, under order of the President, of certain Mexican troops violating United States territory, Services as no deprivation of liberty without due process of law. 122 It was held 189 that the Hague convention of 1907, to which both the United States? and Mexico were signatories, in providing such internment furnished a rule of law immediately applicable by the President. Consequently? in acting on this provision "due process of law" was given.

The increase in the number of treaties providing for international co-operation and administration in matters affecting private rights and the duties of public officers, as well as the growing prominence of provisions in bi-lateral treaties relating to personal and property rights of aliens, also increases the opportunities for a judicial application of conventional international law, and renders it necessary that the constitutions of states be so adjusted that the act engaging the national responsibility to fulfil the duties required by these treaties founding an international legal order, shall automatically confer authority upon the judicial and administrative officers to perform the necessary functions, as well as an obligation upon the persons throughout that legal order to obey the rules therein prescribed. In proportion as such treaties multiply in number and are thus executable by legal process, the solidarity of the international legal order will increase, and its administration through judicial tribunals will become more efficient.

¹³¹ Hague Conventions, 1907, III, Art. 3; IV, Art. 2; VI, Art. 6; VII, Art. 7; VIII, Art. 7; IX, Art. 8; X, Art. 18; XI, Art. 9; XII, Art. 51.

¹²² Ex parte Toscano, 208 Fed. Rep. 938.

It is concluded that the legal nature of treaties has been recognized in the leading states of the world, subject to the following tendencies and limitations.

- (1) Treaty provisions have been to an increasing extent subject to judicial cognizance, both for determining jurisdiction and rules of decision as a result of two movements:
- (a) There is a tendency to require legislative assent to treaties as a step in ratification and hence to give them in fact as great a constitutional sanction as statutes; and
- (b) There is a tendency for treaties to become more generally of an executory nature, founding an international legal order, and hence including matters appropriate for judicial application.
- (2) The courts of different states have applied appropriate treaty provisions as an immediate source of law in varying degrees, the degree of recognition being in the order here given:
- (a) In the United States, by express constitutional provision, courts will apply appropriate treaty provisions in the same manner as statutes, except that they will generally follow the political departments of government in the interpretation of "political questions," and Federal courts will not assume jurisdiction of criminal prosecutions and possibly of extradition on the strength of treaty provisions alone.
- (b) In Switzerland, by express constitutional provision, courts have applied appropriate treaty provisions both to determine jurisdiction and rules of decision.
- (c) In Germany, the appropriate provisions of treaties published in the *Reichsgesetzblatt* have the same legal validity as statutes, apparently vigiving adequate basis for extradition.
- (d) In France the opinion is divided, but apparently courts will apply appropriate treaty provisions, except those interpretable as actes du gouvernement and those depriving courts of a jurisdiction which individuals have a right to demand under the civil law. Treaties appear to be less subject to judicial cognizance in the administrative courts (except the Conseil de Prise) than in the ordinary courts.
- (e) In England, courts (except prize courts) will not apply treaties as such, either to determine their jurisdiction or the rule of decision. It is possible that international law-making conventions may be an

exception to this rule, but the weight of opinion seems to be that an enabling act of Parliament is necessary to bring the requirements of a treaty before the cognizance of the ordinary courts.

- (3) In no country are treaty provisions of an evidently political character, such as those relating to alliances, war and peace, or provisions evidently requiring legislative action, such as an appropriation, regarded as appropriate for judicial application.
- (4) Decisions and regulations of national and international organs, when specifically authorized by treaty, will generally be applied by courts in the same manner as treaty provisions.

QUINCY WRIGHT.

ALBERICO GENTILI AND HIS ADVOCATIO HISPANICA

International law concerns itself so largely with a state of war that the present world-conflict has necessarily had an important bearing upon many of its usages and principles and the opinion has been freely expressed, by some whose views are entitled to respect, that the events of this war have placed the science itself in jeopardy. Without attempting to express an opinion on that point, it is clear that when the war is over, one of the first tasks to be undertaken must be the readjustment of the dislocated parts of the system to the new conditions which have arisen. In doing this we shall probably be led to trace the development of the principles of international law from their earliest formulation up to the present day; but quite outside of this practical object, the accomplishment of which must be left to the future, it may not be without interest at the present time, from the purely historical point of view, to recur to some of the circumstances in which the science came into existence, by calling attention to a much neglected book which shows us in the making some of the important principles of international law which are at issue today, a book written by a man who introduced the modern method of studying that subject. The writer to whom reference is made is Alberico Gentili, and the work in question is his Advocatio Hispanica or the Pleas of a Spanish Advocate.

While the writings of his great rival, Grotius, have been discussed by numberless scholars and translated into many different languages, Gentili was practically forgotten for three centuries, and it was not until 1874, when Professor Holland delivered his inaugural lecture on the great jurist, that interest in his work began to revive. At last in 1908, on the tercentenary of his death, his admirers, having overcome the opposition of the church from which he had withdrawn, unveiled a statue in his honor in his native town in Italy. The reawakened interest in Gentili has brought to light many of the important facts in his life. His career was a picturesque one—an Italian by birth, yet Regius Professor for many years at Oxford; a Prostestant living in exile on account

of his faith, but accredited advocate of his Catholic Majesty, the King of Spain.

From the little village of Sanginesio in northern Italy, where he was born in 1552, he went up to the famous university of Perugia, which bestowed upon him the degree of Doctor of Civil Law when he was twenty years of age. With his natural ability and with the support of his father, who was a man of substance and of standing in the profession of medicine, he could look forward with confidence to an honorable career in his native land, but Protestantism had infected several of the cities of northern Italy; Alberico and his father became adherents of the new heresy, and in 1579 were obliged to seek refuge beyond the Alps. His brother Scipione stopped in Germany and remained there to pursue the study of law and to become in time professor at the University of Altdorf. Alberico, however, continued his journey into England, where he found a number of compatriots who, like himself, were religious refugees. One of these introduced him to Sir Philip Sidney, to whom Gentili dedicated his first great work, the treatise On Embassies, which was brought out the year before Sidney's tragic death at Zutphen. This was his first important excursion into the field of international law, and the circumstances in which he came to take up the work are worth mentioning. In 1580 the famous Jesuit mission under Campion and Parsons was sent to England to organize a general Catholic movement against Elizabeth. The Duke of Guise, who was interested in the plot, found means of attaching to it James of Scotland and Philip of Spain. By 1583 matters were nearly ripe for action, but the spies of Walsingham had scented the coming danger, and just before the conspiracy for the assassination of Elizabeth could be carried out, documents were discovered at the house of Thomas Throgmorton, one of the active participants in the plot; he was put on the rack, and all the plans of the conspirators were laid bare. The disclosures involved Mendoza, the Spanish Ambassador at the court of Queen Elizabeth, and inquiry was made of Alberico Gentili if Mendoza could be sentenced to death in England. Although the pressure upon Gentili must have been great to yield to the popular demand for the exemplary punishment of the man who had violated the elementary principles of hospitality in supporting the plot of the assassins and revolutionists, he bravely replied that no other

action could be taken against Mendoza than dismissal from England. Out of this reply he developed his book On Embassies.

To a second Italian exile who was attached to the court of Queen Elizabeth, he owed his introduction to Robert Dudley, the Earl of Leicester, an event which counted for so much in his subsequent career. The Earl of Leicester was at that time Chancellor of Oxford and thanks to his influence Gentili was received as a Doctor of Civil Law at Oxford and made Reader, at first at the newly established St. John's College, and later at New College. In 1587, seven years after his arrival in England, he was advanced to the position of Regius Professor of Civil Law, the chair occupied in our own day by James Bryce. At this point in his career he turned his attention largely to international law, and within the next three years he brought out the great work by which he is best known, his treatise On the Law of War. His literary activity during his years of residence in England was prodigious. In addition to works on international law and on civil and canon law, in the long lists of his writings which Professor Holland has drawn up one finds pamphlets on Virgil, on the first book of Maccabees, on the Latin of the Vulgate Bible, on the orthography of Aldus Manutius, and a discourse in praise of his two Alma Maters, Perugia and Oxford.

To his affection and admiration for Oxford he gives expression in a letter of dedication, addressed to the Earl of Leicester, which is prefixed to one of his books written in 1582. These feelings he cherished in spite of the fierce religious controversy which raged there during the entire period of his residence. Cardinal Pole had established the Catholics in power, when he entered on the Chancellorship of the University in 1556, by prohibiting the use of English in the college halls, by burning English bibles in the market-place, and by removing Protestant books from the libraries. But with the accession of Elizabeth visitors were appointed "to make a mild and gentle, not rigorous, reformation." But the assumption of the Chancellorship by Leicester in 1564 and his incumbency of this office for twenty-four years led to results which were far from being mild and gentle. The most important of his measures, introduced in the year after Gentili reached the university, stipulated that all students above sixteen years of age should subscribe to the Thirty-nine Articles and the Royal Supremacy. Elizabeth's early reforms had precipitated a struggle between the Protestants and Catholics; the new rule, although directed against the Catholics, militated against the Puritans and led to a feud between them and the adherents of the Church of England. Twenty years later the field of battle shifts once more. As early as 1606 we hear of William Laud, of Gentili's old college, St. John's, preaching in St. Mary's and "letting fall divers passages savouring of popery." This was two years before the death of Gentili, and in his last days he must have looked forward to still another period of religious dissension in his beloved university. With which side in these various controversies he was friendly we do not know. It may be surmised with considerable probability, however, that his sympathies lay with the Puritans. Many of the Protestant refugees were radicals, and Gentili's intimate relations with Leicester would bear out the hypothesis that he belonged to the religious party of Leicester.

It was only natural that the commissaries who visited the university from time to time to satisfy themselves concerning religious practices there should inquire into the private life of members of the suspected faction with special care. In the history which Rashdall and Rait have written of New College, where Gentili lived, we find some records of the results of these investigations which throw an interesting light on conditions in the college. We learn that "Richard Deale, civilian, accused of wearing a yellow doublet, pleaded that it was subrusi coloris, also of frequent absence from morning chapel, which he denied." "Benedict Quarles was accused of pawning his gown, books, and other goods potandi et luxuriandi causa." "Christopher Diggles was accused of frequenting suspected places for the purpose of dancing." "Edward White was accused of reading profane books in Chapel, and at other times the hours of the Virgin." "Thomas Reading, M.A., Reader of Greek in the College, was accused of negligently reading that tongue." Two of the regulations which grew out of a visitation made to New College shortly before the appointment of Gentili to a Readership there are interesting in connection with Gentili's work in that college. They are to the following effect: (1) "The Readers of Philosophy and Law are required to lecture five times a week," and (2) "The disputations are frequently begun late at night, and only last a quarter of an hour. They are in future to begin not later than 8 P. M. and to last two hours."

Both Queen Elizabeth and King James took a lively interest in Oxford, and a few years after Gentili's advancement to a Regius Professorship the Queen made a ceremonious visit to the university. From a Cambridge gentleman who attended Lord Burleigh on the visit we have a long account of the programme which was carried out for the edification and entertainment of Elizabeth. It ran through a period of six days, from September 22 to 28, 1592, and included a portentous series of sermons, addresses, and disputations, so that we are not surprised to hear of the impatience of the Queen in the middle of a particularly tedious session when "the Proctors uttering their accustomed words unto the Replier, viz., 'Procede, Magister,' her Majestie, supposing it had been spoken to the Answerer, said, that 'He had bene already too longe." The public exercises of the last day must have been those with which Gentili was most concerned, for they were given over to law and divinity. "At three of the clock in the afternoone, hir Majestie being again come to St. Marye's (attended, as already sayd), Mr. Dr.— B— answered in Law, and four other Doctors replied. The question which they most stood upon was this; viz., 'An Judex debet judicare secundum allegata & probata, contra Conscientiam?' which (after the Disputation) was concluded in the affirmative by Mr. Dr. (Francis Bevans, LL.D.), Master of Jesus Colledge there, and then Chancellor of Hereford." We may surmise with some plausibility that Gentili, the Regius Professor of Civil Law, was one of the "four other Doctors" who replied.

It would be interesting to know who the friends of Gentili were during his residence at Oxford, but, with the exception of a few men to whom he refers in his Advocatio and in other writings, we cannot say. Laud and Hobbes came to the university during his time, but they were much younger than he was. To one of his contemporaries, Sir Thomas Bodley, however, we feel that he must have been drawn by the common passion which both men had for books, of which in the case of Gentili we have such striking proof in his Advocatio.

The composition of the book just mentioned falls during the closing years of his life, and the work was not published until after his death. During the last part of the sixteenth century and the early years of the seventeenth, Spain and the Netherlands were at war with each other.

Out of this conflict there developed between the Spanish and the Dutch a great many difficult questions of international law, in which England as a neutral nation was concerned, and, as Gentili's brother Scipione remarks in his preface to the Advocatio, James I "could not help allowing the controversies and quarrels which these people had referred to him to be settled in accordance with the principles of law and equity." The cases at issue were heard by the English Court of Admiralty, and Alberico Gentili, with the approval of King James, represented the interests of Spain at the hearings. He acted in this capacity from 1605 up to his death in 1608. His appointment to this post testifies to the high esteem in which he was held as a jurist and to the reputation throughout the world which his writings on international law had brought him. Perhaps the opinion which he rendered to the English court in the case of the Ambassador Mendoza also made the King of Spain look with favor on his appointment.

The arguments which he made in support of Spanish claims, and the opinions which he wrote on other matters of international and of private law were published after his death and at his request in the Advocatio Hispanica. Within my somewhat limited acquaintance with legal works of this period this book is unique. It is unique in two respects. The jurists who preceded Gentili or were his contemporaries composed treatises on general subjects or comments and observations on particular laws or fictitious legal cases. In this book Gentili presents the arguments actually made before the court and where important issues were at stake. We have in it therefore the actual application of the principles of international law to concrete cases. Dealing as it does largely with decisions, precedents, and usage, it is conceived more in the spirit of modern discussions of the subject than any of the other legal writings of the time. It is unique also in the fact that it has a personal note in the letters which it contains addressed by the author to the Spanish Ambassador and to others on certain cases after the decision on them had been rendered.

The presence in the book of one class of questions illustrates some of the important changes which civilization has undergone since the sixteenth century. The pirate, the privateer, the Berber, and the Turk figure largely in Gentili's pages. What constituted piracy? This

was a delicate question in the days of Sir Francis Drake and the "Sea Beggars," and the line between piracy and legal warfare was not an easy one to draw. If one bought property directly from pirates, could he acquire legal ownership of it? Gentili thought he could not, but if one bought through the fiscus of Barbary property taken by pirates, the case was more difficult because of the quasi-legal standing of Barbary among the states of the world. So far as the Turk was concerned, ecclesiastical tradition and canon law taught that there was a perpetual state of war between the believer and the infidel and that the Christian might have no dealings with the infidel. Gentili boldly challenges this doctrine in the name of the law of nations which, as he says, makes no distinction between nations. He challenges it in the name of England, because England has no perpetual enemies. He still retains a vestige of the old prejudice against the Turks in holding that their testimony may not be taken against Christians.

To the old régime belongs also the practice of requisitioning in time of war the ships of a friendly people. In one of their wars with Turkey the Tuscans requisitioned an English ship which touched at one of their ports. She came safely through the war, but was lost on the return voyage. Gentili does not seem to think that the action of the Tuscans in appropriating an English vessel for their own purposes constituted a breach of international usage, but he maintains that they may be held in damages for the loss of the ship. In this category of questions which have been settled once for all since Gentili's time should probably be placed the important case with which the book opens. A Spanish vessel, which had been captured by the Dutch, was being navigated by them through English waters when the English authorities took possession of it and the case was heard before the Admiralty. The questions at issue were fundamental and were much in dispute. Did the authority of a state extend beyond its coast-line, and, if it did, to what point did it reach? If the subjects and the property of one belligerent Power were brought by the subjects of another belligerent Power within the jurisdiction of a state friendly to both did they regain their original status or not? These two questions Gentili discusses at great length with much acumen and learning. Territory, he says, covers water as well as land, and he quotes without dissent the claim which the Vene-

tians and the Genoese made to jurisdiction up to one hundred miles from the coast. It is reasonably clear, however, that although the principle was recognized that jurisdiction extended beyond the coastline, the limit of its extent had not been fixed. On the point of ownership Gentili maintained that ownership could not be acquired by a belligerent until the captured property had been brought within fortified lines, and that furthermore as soon as the Spanish prisoners and the captured Spanish property came under the English jurisdiction, Spain automatically acquired ownership again. In this connection he drew an interesting analogical argument from the canon law. If a culprit, he says, be taken into a church or a graveyard by a sheriff, the secular control over him lapses, and he may not be taken therefrom by force. Probably Gentili's arguments on these matters contributed largely to settle, for the future, phases of these two great questions, of jurisdiction beyond the coast-line, and of the rights of belligerents in neutral territory.

The majority of the cases which he pleads, however, involve questions that in one aspect or another are still much under discussion. A friend inquires of him, for instance, if the naturalization of a Dutchman in England will make the Dutchman's son a British subject. The Spanish Ambassador's right to intervene in civil actions in the English courts in behalf of Spanish subjects is questioned, and the Ambassador appeals to Gentili for advice. The author urges repeatedly in one form or another the English doctrine of the freedom of the high seas. "Et iter marinum, non est liberrimum?" he says. On the other hand, the rights of a harbor must be protected at all costs. One case which he argues is that of a Spanish vessel carrying troops or supplies to the Netherlands which had been attacked off an English port and had taken refuge in the harbor. The Dutchmen seem to have been lying off the port when the trial opened waiting for the Spaniards to come out. Gentili maintains that the course pursued by the Dutch is in violation of English sovereignty, that the King of England should give the Spaniards a safe conduct, not to Spain, but to Belgium, whither they had been going, and should hold the Dutch back until the Spaniards had reached a safe distance.

In one argument in defense of maritime rights he takes even a more

advanced position than is commonly assumed today. The Tuscans and the Turks were raiding each other, although Gentili says that a state of legal warfare did not exist between them; a Tuscan ship of war attempted to stop an English merchant vessel carrying Turks and Turkish property, and the Englishmen resisted. Gentili claims damages for the loss suffered by the English and in the course of his argument says: "The defense made by the English was honorable in behalf of the Turks, who certainly would have been molested on board the ship of our countrymen by the Tuscans. Thus wrong is done to us when it is done to another who is in our home, for a ship herself is likened to a home."

One of the cases which he pleads has a double interest for us because it illustrates his method of argumentation and concerns a subject which is much discussed at the present time. In a passage in one of his speeches he tells us that before appearing in court it was his practice to turn over in his mind everything which could be said in support of his opponents. Indeed the early part of most of his arguments consists of a categorical statement of the case of the opposite side, supported by the laws and text-writers who could be cited in its defense. In illustration of this characteristic scholastic method, and because of the present-day interest of the issue involved in the suit in question it may be worth while to give an abstract of his argument.

An English ship while en route to Constantinople with a cargo of general merchandise and powder, pulvis tormentarius, as Gentili calls it, was seized by the Sardinians and Maltese and the cargo confiscated. Gentili appeared for the English owners to contest the right of confiscation. Let us present his conclusions in the same systematic way in which he sets them forth in his plea in court. At the outset come the arguments, marshalled firstly, secondly, and so forth, from the standpoint of the Sardinians and Maltese: (1) The civil law, as it stands in the codex of Justinian, prescribes capital punishment for anyone who shall furnish the barbarians with munitions of war; (2) The canon law imposes excommunication upon Christians who send arms to the Saracens, and the Saracens are amalgamated with the Turks; (3) The precedent of the Hanseatic cities which were forbidden to furnish munitions of war to the Spaniards, when Spain and England were at war, shows that it is contrary to the law of nations for a neutral people to send arms to bel-

ligerent nations with whom they are at peace, and in this connection he coins the apothegm: "Do not unto others what ye would not that they should do unto you;" (4) The treaty between England and Spain forbids either people to furnish aid to the enemy of the other, and Spain is the Ally of the Emperor who is at war with the Turks. Therefore the English may not aid Turkey. Indeed Christians are at all times at war with the Turks.

In reply to his own formulation of the arguments of his opponents Gentili maintains: (1) Part of the cargo was made up of lawful merchandise, and that at least is exempt from confiscation, unless it can be shown that the owners of the lawful merchandise were cognisant of the unlawful goods; (2) The English were en route. They might have turned back before reaching Constantinople. The offense had not been committed until the act was complete; (3) The powder may have been intended for the ship's defense. Even in those states where the exportation of grain is forbidden a man going abroad may take enough with him for his journey, and if the English had any powder left over it would have been lawful for them to sell it at their journey's end; (4) The carriage of powder would not be unlawful per se. The powder might have been used by one faction of the Turks against another; (5) The English owners made out manifests before the proper English officials and under the Orders in Council of Queen Elizabeth may carry their goods anywhere. The English have therefore observed the English statutes and they cannot be held amenable to the laws of any other sovereign; (6) The treaty between England and Spain does not apply in this case, because Spain is not at war with Turkey, and the naming of the King of Spain among the allies of the Emperor is a formality without meaning. Accordingly Gentili concludes that the Maltese may obstruct the trade of England with the Turks but may not punish English shipowners in person or in property.

The serious tone of the arguments in the *Advocatio* is relieved now and then by confidential letters of comment on topics connected with some of the cases. These letters sometimes reveal the shrewdness of Gentili or throw light on contemporary conditions. Thus, in writing to the junior counsel in one of the cases in which they both appeared, he says:

Your arguments were outside the present inquiry. Most learned man, always remember to notice the form which the question takes, although you both can include, and perhaps also at times ought to include what may either not be pertinent to the matter, or may be of no weight. By such things some judges are often more influenced than they are by appropriate and sound considerations.

In another personal letter he says of a judge before whom he had recently appeared:

At eight o'clock in the evening he was asked by me to examine all the points—at sunrise the next morning he gave a judgment against us, and on another occasion after hearing the representations of six advocates on the other side up to the hour for dinner, right after dinner he gave an interlocutory decree, without examining other statements (I believe this at any rate) or the opinion of Cravetta (this I know for sure), on which our strongest argument was based.

The attitude which Gentili took toward the different branches of law and the method which he followed in establishing judicial principles are more clearly shown in the Advocatio than in any of his other writings, and perhaps in that fact the primary importance of this work lies. In the first place he broke away from ecclesiastical tradition. Most of his predecessors, men like Covarruvias, Suarez, Molina, and Soto, who were Catholic theologians, carried over into their discussions of international law the principles of the canon law and the method of a priori reasoning. Gentili was a jurist by profession; his adherence to Protestantism released him from ecclesiastical preconceptions, and the bent of his own mind seems to have led him to the practice of examining concrete cases of his own time and of drawing practical rules from them. He may therefore with propriety be called the founder of the modern historical school of international law. It is characteristic of this change of attitude in the study of the law of nations that probably not one in fifty of his own references in the Advocatio is to the canon law, and when the usages of the law of nations and the teachings of the canon law come into conflict, as they do in the discussion given above of the right of the English to trade with the Turks, canon law must yield.

He broke away from his predecessors also in giving up largely the attempt to cast the law of nations in the mould of the Roman civil law. The civil law, commentators on it, and precedents from antiquity are

frequently cited, but rather by way of confirming or illustrating rules derived from contemporary usage. At the same time he stands between the ancient and the modern world, and his inheritance from the ancient world is evident in many ways. It comes out in the scholastic form of his argumentation, which carries us back to the schools of the Middle Ages. It appears occasionally in a casuistical argument, as it does in the fanciful distinction which he tries to make in one passage between the meanings of exterus, externus, and extraneus, or in the insistence in another connection on an exact analogy between physical and legal processes.

Great as were his achievements in the field of international law, yet in stemming the tide in England which was setting toward the common law he was doomed to failure. He fought earnestly in this cause, but it was a lost cause, as he himself seems to recognize at the close of one of his speeches recorded in the Advocatio:

Granted that these pettifoggers of the common law have pushed their way into marriage cases, into testamentary, ecclesiastical, and maritime cases, and into others of this sort, although such cases have always been held to be the peculiar province of those versed in the civil law, but granted, I say, that they have pushed their way in, simply because those cases had to do with Englishmen, with English concerns, with transactions carried on in England; on this account, pray, shall they rush in and seize these cases involving foreigners? Even though this state of affairs is in part to be explained by the constantly increasing power of those who study the common law, still the old landmarks should be preserved.

In one of the two tasks then to which he devoted himself, he in part failed, I mean in maintaining the supremacy of the civil law over the common law in regulating those transactions in which the civil law seemed to him especially applicable. In the other he succeeded, for he set forth once for all in his writings the correct method to be employed in establishing the principles of the law of nations, and he illustrated in the *Advocatio* its practical application in settling the actual controversies which had arisen between the peoples of his time.

FRANK FROST ABBOTT.

SOME QUESTIONS OF INTERNATIONAL LAW IN THE EUROPEAN WAR ¹

XI

THE SALE AND EXPORTATION OF ARMS AND MUNITIONS OF WAR TO BELLIGERENTS

The policy of the United States Government in permitting the exportation of arms, munitions, and other war supplies for the use of belligerents during the present war has been the subject of much discussion in Congress and in the press and has provoked diplomatic remonstrances from the Governments of Germany and Austria-Hungary. As a general proposition, it has been admitted by those who complain of the extensive traffic which has gone on between American manufacturers and certain of the belligerents, that neutral governments are not by the existing rules of international law bound to prevent their nationals from engaging in such traffic; but it has been argued that special circumstances to which the present war has given rise give a "new conception to the aspect of neutrality" and that an abnormal and unprecedented situation has been created which makes the continued furnishing of arms and munitions to the belligerents on one side, when their adversaries are unable to avail themselves of the American markets, a violation of the spirit of strict neutrality.

In consequence of the unexampled magnitude of the war and the huge demand which it created for American arms, munitions and other supplies, a demand which was augmented by the closing of the markets of the neutral states of Europe to the various belligerents, the arms and munitions industries of the United States quickly "soared to unimagined heights." Existing establishments were promptly enlarged, and were operated night and day to the full limit of their capacity, two and sometimes three shifts of workingmen being employed for the

purpose.² As a result, their output was doubled, and in some cases trebled. In some instances establishments for the manufacture of clocks, typewriters, locomotives, and other articles were converted into manufactories for the production of war supplies. So enormous were the demands and so alluring were the profits that new industries were quickly organized, and in several instances populous cities sprang into existence as if by magic, the entire populations of which were engaged in the manufacture of supplies to meet the necessities of the war.³ The Governments of Germany and Austria-Hungary, as well as large numbers of their sympathizers in this country, protested and asserted that in permitting the territory of the United States to become the seat of such a traffic, in fact for the benefit of the Entente Powers alone, the government was violating the spirit if not the letter of the law of neutrality.

Do the established rules of international law impose on the governments of neutral states an obligation generally to prevent their nationals from selling and transporting arms and munitions to any belligerents who may wish to buy? If not, are there conceivable special circumstances which may make it their duty to do so in order to preserve the

² The Remington Arms Company is reported to have added eleven new buildings at a cost of approximately \$3,000,000 to its plant during the early months of the war.

It is impossible to give even approximately correct figures of the volume of this trade. The daily press frequently contained reports of contracts with agents of the British, French, and Russian Governments for fifty-million and hundred-million dollar orders. According to statistics compiled by the Department of Commerce (published in the Congressional Record of January 13, 1916, pp. 1071-1072) the value of exports of munitions alone during the first nine months of the year 1915 exceeded the value of those for the corresponding months of 1913 by \$160,000,000. It was estimated that the value of the exports of explosives and fire arms to belligerent countries during the month of October, 1915, exceeded that of October, 1913, by \$18,000,000. The increased exports of such articles as horses, woolen goods, automobiles, etc., during the same month amounted to \$21,000,000. The increase in food stuffs, a very large proportion of which was doubtless used for feeding armies, amounted to \$26,000,000. According to information given out by the Department of Commerce on May 31, 1916, the total purchases of arms and munitions in the United States during the first twenty months of the war amounted to \$388,000,000. By July 16 the amount had gone up to \$446,000,000. During the month of March more than \$50,000,000 worth of munitions were exported from the United States. Shipments of high explosive shells and shrapnel, it was said, amounted to \$1,000,000 per day, while \$500,000 worth of powder was being exported daily to Europe.

spirit as well as the form of neutrality? And if so, may it be done at any time during the progress of the war when the effect would be to alter the existing situation to the advantage of one belligerent and to the detriment of the other?

The first question can only be answered in the negative. A neutral government is not legally bound to forbid its nationals from selling and transporting for the use of belligerents, arms, munitions, or any other supplies which they may wish to buy. Fully nine-tenths of the textwriters on international law who have expressed opinions on the question have pronounced in favor of this view. It is the view on which states have generally acted in the past; and it is the view formally expressed in two international conventions adopted by the Second Hague Conference.

It would be a work of supererogation to cite all the text-writers and jurists of repute from Albericus Gentilis to the present ⁵ who have affirmed this view. The opinion expressed by Jefferson as Secretary of State in 1793, when the British Government complained of the sale by

⁴ This is expressly affirmed by Article 7 of the Hague Conventions Nos. V and XIII of 1907. The latter convention has been ratified by twenty five and adhered to by three non-signatory Powers, including Germany and Austria-Hungary, and none of them reserved their ratification to Article 7. It can hardly be maintained that because several of the belligerents in the present war have not ratified the conventions, Article 7 of either convention is not binding. This, because the rule laid down by Article 7 is declaratory, not amendatory, of the existing law of nations. Compare editorials in this Journal for July, 1915, p. 688, and October 15, 1915, p. 932. Furthermore, the provisions of Article 20 of Convention V and of 28 of Convention XIII, that they shall apply only as between the contracting parties, have no force except in so far as the convention imposes restrictions on the sovereignty of neutral states; they do not, therefore, apply to provisions which merely affirm existing rights. Compare De Lapradelle, "Le marché des armes aux Etats Unis et le Devoir des Neutres" (Revue Politique et Parlementaire, Oct., 1915, p. 9). The discussions of the subject at the Second Hague Conference show very clearly that Article 7 of the two conventions was not intended to impose on neutral governments an obligation to forbid such trade. See especially the remarks of Herr Kriege, Actes et Documents, Vol. III, p. 859; of M. Renault (ibid., p. 867) and the report of Colonel Borel (ibid., Vol. I, p. 141). See also the review and comment of the editor of this JOURNAL for July, 1915, pp. 689-691.

⁶ When England complained in the sixteenth century of the sale by neutral merchants of munitions to Spain, says Gentilis, the complaint was probably well founded in equity but not in law. Quoted by Nys, *Le Droit International*, Vol. III, p. 637.

American citizens of arms and munitions to an agent of the French Government, that "our citizens have always been free to vend and export arms; that it is the constant occupation and livelihood of some of them;" that "to suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries in which we have no concern would scarcely be expected;" and that "it would be hard in principle and impossible in practice," has been affirmed and reaffirmed by nearly all American writers, judges, Secretaries of State, and Presidents who have had occasion to pronounce opinions on the subject. Field and Woolsey appear to be the only American writers of note who have questioned the expediency or morality of the existing rule. Likewise, the opinion of Jefferson and his successors has been that almost unanimously held by British writers, the only dis-

- ^o Letter to the Minister of Great Britain, May 15, 1793, quoted by Moore, International Law Digest, Vol. VII, p. 955. The views of a large number of text-writers are given by Calvo in his *Le Droit International*, Vol. IV, Sec. 2625. Many pages in Moore's Digest (Vol. VII, pp. 955–975) are devoted to setting forth the views of American writers, Presidents, Secretaries of State, and judges on the subject.
 - ⁷ Outlines of an International Code, Sec. 964.
- 8 Referring to the opinion of Story in the case of the Santissima Trinidad (7 Wheaton, 340) that "there is nothing in our laws or in the law of nations that forbids our citizens from sending armed vessels as well as munitions of war to foreign ports for sale; that it is a commercial venture which no nation is bound to prohibit," Woolsey (International Law, p. 320, note 1) expresses regret that Judge Story should have said this, if it be true. Such trade, Woolsey says, is "immoral and tends to produce lasting animosities." "A juster and more humane policy," he says, "would make all innocent trade with the enemy valid and require a neutral to pass stringent and effectual laws against contraband trade." Burgess (The European War, Ch. VIII) seems to be the only native-born American scholar of note who since the outbreak of the present war has attacked the American policy in regard to the right of neutrals to sell arms and munitions to belligerents. Professor Burgess is an ardent, almost violent, sympathizer with Germany, and his views can hardly be accepted as those of an impartial jurist. Lieber, in an article in the Revue de Droit International, Vol. IV (1872), p. 469, adverting to the sale of arms to the French in 1870 expressed the opinion that "no neutral government has the right to sell arms or other articles of contraband to one of the belligerents, nor can it permit individuals to sell directly those same articles." Apparently, however, he had reference only to the sale of arms from the government arsenals by individuals who had purchased them from the government.
- ⁹ Lord Stowell in the case of the *Immanuel* (2 Rob., p. 198), thus early expressed the view generally adopted by English writers and jurists: "Upon the breaking out of a war it is the right of neutrals to carry on their accustomed trade with the ex-

senting voice apparently being that of Phillimore, who holds that it is contrary to neutrality for a government to permit the sale within its territory of munitions of war to a belligerent. Among French jurists the right of neutrals to engage in such traffic has been denied by only a few, the best known of whom are Hautefeuille, Pistoye, and Duverdy. Kleen, a Swedish jurist and writer of high repute, also holds the view that it is the duty of neutrals to prevent their subjects from engaging in contraband traffic, and Brusa, an Italian writer, takes the same view. A

Among German writers, there has been almost the same unanimity of view in favor of the right of neutrals to sell arms and munitions to belligerents. Perels, at one time legal adviser to the German Admiralty, referring to the "oft-discussed question" as to whether a neutral state is *obliged* to prevent its subjects from loaning money to belligerents or furnishing them with war materials, etc., says: "It cannot be doubted in fact that unless there is a notorious favor shown towards one of the

ception of the particular cases of a trade to blockaded ports or in contraband articles (in both of which cases their property is liable to be condemned)."

10 "If," says Phillimore (Int. Law, Vol. III, Sec. 230), "the foundations of international justice have been correctly pointed out in a former volume of this work. (Vol. I, pt. I, ch. 3), and if it be the true character of a neutral to abstain from every act which may better or worsen the condition of a belligerent, the unlawfulness of any such sale is a necessary conclusion from these premises." Phillimore (Sec. 229, note) quotes Lord Grenville (Letters of Sulpicius, p. 26) as saying, "If I have wrested my enemy's sword from his hands, the bystander who furnishes him with a fresh weapon can have no pretense to be considered as a neutral in the contest." Referring to the view of Bynkershoek (Questiones Juris Pub., Bk. I, C. 22), who holds that while war materials may not be carried by neutrals, they may sell them in their own country, Phillimore (Sec. 231) remarks that there is no difference in principle between the two permissions: "both are, on one and the same principle inconsistent with the duties of neutrality."

- ¹¹ Droits et Devoirs des Nations Neutres en Temps de Guerre, Vol. II, p. 424.
- 12 Traité des Prises Maritimes, Vol. I, p. 394.

^{13 &}quot;Every neutral state," says Kleen (*Lois et usages de la neutralité*, Vol. I, sec. 93), "must not only itself abstain from furnishing to either belligerent contraband articles, but must watch over (*surveiller*) its subjects and other individuals who find themselves within its territory, to see that they do not furnish belligerents with such articles; it must prohibit by law such traffic and must prevent it as far as possible and punish such acts wherever it exercises sovereign authority." See also his *Contrebande de Guerre*, pp. 52, 67.

¹⁴ Revue de Droit Int., Vol. XXVI (1894), p. 404.

belligerents there is no obligation to forbid the assistance." ¹⁵ Kluber likewise holds that "ordinarily a belligerent does not have the right to require a neutral state to abstain from trade with his enemy" and that "the law of nations does not prohibit neutrals from trading in articles of merchandise which serve the immediate military needs of belligerents, provided there is no design to favor one of the belligerents as against the other." ¹⁶

Geffcken, who considers the subject of trade in arms and war material at greater length than most German writers, concludes that "it is well-established by international law that the sale and exportation of contraband by the subjects of neutral states is no violation of their neutral duties." ¹⁷ After reviewing at length the opinions of the text-writers, the vast majority of whom pronounce in favor of the legitimacy of such trade, Geffcken remarks that, in view of this array of authority, the contention of the German Government in 1870 that England was bound to prohibit the sale of arms and munitions of war to agents of the French Government naturally excited astonishment.

Among the German jurists who have defended most strongly the right of neutrals to engage in contraband trade may be mentioned Professor von Bar of Göttingen. He criticises Kleen's projet for prohibiting such trade as one which, if made a rule of international law, would injure incalculably not only the commerce of neutrals, but even their manufacturing industry and in a large measure the production of their agriculture, forests and mines, and reduce a considerable part of their population to famine. It would, moreover, he asserts, entail a necessity of surveillance and control over the sale and transportation of merchandise in neutral countries which would be intolerable, necessitate numerous searches by customs officials and impose upon neutral governments obligations and duties which they would find it impossible to enforce. "Thus if a war should break out between Chile and Peru, the Governments of Germany and Austria would be obliged to exercise

¹⁵ Manuel de Droit Maritime International (French trans. by Arendt), p. 270.

¹⁰ Droit des Gens moderne de l'Europe (French trans. by Ott), Sec. 287.

¹¹ Handel mit waffen und Kriegsmaterial, in Holtzendorff, Handbuch des Völkerrechts, Bd. IV, Sec. 152.

¹⁸ In an article entitled, Observations sur la contrebande de guerre, in the Revue de Droit Int., Vol. XXVI (1894), pp. 401 ff.

this exorbitant surveillance, because international duty has no geographical limits." ¹⁹ He goes on to say:

The fact that two states engage in war with each other authorizes neither to demand that all the relations which exist between his adversary and a neutral state be suspended, even though the adversary derives an advantage from those relations. If two states go to war, the world is not bound to suspend its customary pursuits in order to prevent one of the belligerents from deriving an advantage or sustaining an injury in consequence of those activities.

The contrary assumption would be to hold that belligerents as such have a right to dominate the rest of the world. What a belligerent may lawfully demand is only that the relations between a neutral and his adversary shall remain as they were before. Consequently, the subjects of neutral states may continue to maintain commercial relations with belligerents as formerly, and if they manufacture arms and munitions, and have before the war, sold them to everybody, they may continue to do so after the war, even to belligerents.²⁰ It is wrong, therefore, to denounce, as has often been done, the sale of arms by neutrals to belligerents as a business which pollutes the hands and honor of neutral countries. This phrase has no more force than a tirade launched against a fire insurance company on the ground that it is engaged in a miserable business which draws profit from the misfortunes of others.²¹

True progress, says von Bar, consists not in prohibiting trade in contraband, as Kleen and Brusa would do, but in abolishing the right of belligerents to interfere with such traffic, leaving to them only the right of blockade.²²

Turning to the argument sometimes advanced that the sale of arms and munitions to belligerents serves only to prolong the evils of war and that a trade the profits of which are drawn from bloody combats which the interests of humanity require to be stopped as promptly as possible is immoral, von Bar pronounces it to be specious as Lorimer had pointed out

with his usual sagacity when he remarked that the object of war is not a temporary cessation of hostilities but a durable peace, and it was quite unreasonable that a nation should be forced to make peace by refusing

¹⁸ In an article entitled, Observations sur la contrebande de guerre, in the Revue de Droit Int., Vol. XXVI (1894), p. 404.

²⁰ Ibid., p. 407.

²¹ Ibid., p. 410.

²² Ibid., p. 408. This suggestion, he said, had already been advocated by Kluber and Lorimer.

to furnish it with the means of continuing the war. If the end of the war is brought about by the sole reason that one of the belligerents has been prevented from obtaining arms and munitions by purchasing them with its own money, it is not really vanquished and in a later time the quarrel and the war will be renewed.²³

Among other German and Austrian writers who have considered the subject, the following admit that neutral states are not bound to prohibit their subjects from selling or exporting arms and munitions of war to belligerents: von Liszt,²⁴ Martens,²⁵ Lehman,²⁶ Schmalz,²⁷ Marquardsen,²⁸ Schramn,²⁹ Einicke,³⁰ Hold von Ferneck ³¹ and Saalfeld.²² The German official view was expressed by Herr Kriege at the Second Hague Conference during the discussion of the British proposal to abolish contraband, when he said, "neutral states are not bound to prevent their subjects from engaging in a commerce which from the point of view of belligerents must be considered as illicit," ³⁸ and the German delegation was one of the five which voted against the proposal.

Heffter is sometimes quoted ³⁴ in favor of the view that neutrals are bound to forbid the sale of arms and munitions of war to belligerents, but, as Geffcken points out, ³⁵ Heffter expresses no such view. What he says is that some neutral governments have believed that they were bound to prevent their citizens from giving aid to belligerents and to

- ²³ In an article entitled, Observations sur la contrebande de guerre, in the Revue de Droit Int., Vol. XXVI (1894), p. 408.
 - 24 Das Völkerrecht, 4th ed., p. 362.
 - 26 Précis de Droit des Gens, Vol. II, Sec. 315.
 - * Die Zufuhr von Kriegskonterbanden Waren, p. 53.
 - ²¹ Das Europaische Volkerrecht, pp. 286-7.
- ²⁸ Der Frent. Fall, p. 37. "If a neutral sells arms or munitions within his own land to agents of a belligerent, the doctrine of contraband does not apply. A neutral state may forbid such traffic through anxiety or the fear of a powerful belligerent, but there is no legal obligation (vorschrift) to do it."
 - Das Prisenrecht in Seiner neusten Gestalt, Sec. 10.
 - 30 Recht und Pflichten der neutralen Mächte in Seekriege, p. 99.
- ¹¹ Die Kriegskonterbande. See p. 155 for the text of a proposed projet concerning the rights and duties of neutral states regarding trade in contraband, Art. I, Sec. 2 of which declares that "neutrals are not bound to prohibit their citizens from trading in these articles," i. e., articles of a contraband character.
 - ²² Handbuch des Positiven Völkerrechts, Sec. 133.
 - 33 Actes et Documents, Vol. III, p. 859.
 - 34 For example by Gessner, Le Droit des neutres (French trans.), p. 124.
 - 35 In a note to Sec. 148 (p. 351), of Heffter.

punish such acts, but that they are not responsible for damages caused thereby; they have only to watch over (surveiller) acts contrary to the rules of neutrality and to prevent manifest infractions thereof.³⁶ He expresses no opinion as to whether the sale of arms or munitions is contrary to the rules of neutrality.

Gessner is one of the very few German authorities who have pronounced an opinion against the existing practice. The sale of contraband articles to a belligerent is, he contends, a violation of the law of nations, for which the injured belligerent has a right to damages and against which he may resort to reprisals, or even war, in case of persistency.³⁷ The toleration by the British Government in 1870 of the sale of arms to the French was, he says, such a violation, although it was in a measure excusable for the reason that during the Crimean War the Prussian Government had allowed the transit of arms through Prussian territory to Russia. His statement that German authority is in favor of the prohibition of such trade is emphatically denied by Geffcken, who charges him with misreading Bluntschli, Heffter, and others.³⁸

Bluntschli distinguishes between the exportation of arms in large quantities and exportation in small quantities (*zwischen sendungen im grossen und kleinen*), the former of which a neutral is bound to prevent "when it results from the circumstances that the sending of these articles constitutes a subsidy of war." ³⁹ The German General Staff in

³⁴ Droit Int. de l'Europe, Sec. 148.

¹⁷ Le Droit des neutres, p. 126.

³⁸ See Geffcken's note on Heffter, p. 351.

³⁹ Droit Int. Codifié (ed. by Lardy), Sec. 766. A neutral state, says Bluntschli, is not required to prohibit the exportation en détail of arms and munitions, because such trade is of little importance in the relations between belligerents and neutrals, and the responsibility of preventing it would be very difficult if not impossible and would subject the citizens to innumerable vexations. But it is otherwise, he says, in regard to expéditions en gros, since they give one of the belligerents a real advantage and often amount to a veritable subsidy. Referring to the policy of the British Government in 1870 of permitting the sale of arms to the French, Bluntschli expresses the view that while the government was not guilty of any "direct violation" of international law, it did not observe scrupulously the prohibition of international law in regard to giving aid to one of the belligerents. It should have prevented entirely the exportation of arms, or at least should have subjected it to restrictions, and in doing so it would not have amounted to "benevolent" neutrality but rather a "strict" neutrality.

the Kriegsbrauch im Landkriege makes the same distinction.⁴⁰ But as Geffcken has pointed out, no valid distinction between the furnishing of arms in large quantities and the furnishing of them in small quantities can be made, both acts being the same in principle.⁴¹

But one conclusion is possible from this review of the opinions of the leading writers, namely, that the sale by citizens of neutral states of arms and munitions to belligerents has not in the past been regarded as contrary to the accepted notions of neutrality. Only a very few jurists of repute have ever maintained the contrary, and it may be added that most of them are to be found among the older writers. So far as I am aware, there is no authoritative text-writer of the present day except Brusa and Kleen, who advocates the latter view.

The practice of neutrals in the past has for the most part been in accordance with the views of the text-writers. In all the wars since the United States achieved its independence, its markets have been open to belligerents to purchase without restriction such supplies as they wished. During the Napoleonic Wars the French purchased arms and munitions in the United States, and the well-known answer of the Secretary of State to the complaints of the British Government has been quoted above.

President Pierce in his annual message of December 3, 1854, adverting to the neutrality policy of the United States during the Crimean War, stated that

During the progress of the present war in Europe, our citizens have without national responsibility * * * sold powder and arms to all buyers regardless of the destination of those articles. * * * The laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles contraband of war or to take munitions of war or soldiers on board their private ships for transportation; and, although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality.⁴²

⁴⁰ Pt. III, Sec. 3, Par. b.

⁴¹ Holtzendorff, Handbuch, Bd. IV, p. 690. See also his note on page 351 of Heffter. Numerous other writers have criticised as impracticable if not impossible the attempt to draw a distinction between large and small commercial transactions in respect to the sale of contraband goods. See, for example, Lawrence, Principles, p. 699; Oppenheim, Vol. II, p. 377; and Snow, Int. Law, p. 134.

⁴² Richardson, Messages and Papers of the Presidents, Vol. V, p. 331.

President Grant in his proclamation of neutrality of August 22, 1870, issued at the outbreak of the war between Germany and France, stated that American citizens might "lawfully and without restriction by reason of the aforesaid state of war manufacture and sell within the United States arms and munitions of war and other articles known as 'contraband of war,' although," he added, "they could not carry such articles upon the high seas for the use of belligerents without incurring the risk of capture and the penalties denounced by the law of nations in that behalf.⁴³

President Wilson in his neutrality proclamation of August 4, 1914, upon the outbreak of the present war, reaffirmed, in the identical words of President Grant, the right of American citizens to manufacture and sell arms and munitions of war to belligerents, subject to the same conditions.⁴⁴ In a circular of the Department of State of October 15, 1914, reciting that numerous inquiries had been received from American merchants and other persons as to whether they could sell to governments or nations at war contraband articles without violating the neutrality of the United States, and also referring to complaints that had been received regarding sales of contraband on the apparent supposition that they were unneutral acts which the government should prevent, the Department stated that there was evidently "widespread misapprehension among the people of this country as to the obligations of the United States as a neutral nation in relation to trade in contraband and as to the powers of the executive branch of the government over persons who engage in it." To remove this misapprehension, the Department declared that "generally speaking a citizen of the United States can sell to a belligerent government or its agent any article of commerce which he pleases. He is not prohibited from doing this by any rule of international law, by any treaty provision, or by any statute of the United States." It makes no difference, the circular declared, whether the articles sold are exclusively for war purposes, such as fire arms, explosives, etc., or are food stuffs, clothing, horses, etc., for the use of the army or navy of the belligerent. Furthermore, the circular continued, a neutral government

⁴³ Richardson, Messages and Papers of the Presidents, Vol. VII, p. 88.

 $^{^{44}\,\}mathrm{The}$ text of the proclamation is printed in this Journal, Supp., Jan. 1915, pp. 110-114.

is not compelled by international law, by treaty, or by statute to prevent these sales to a belligerent. Such sales, therefore, by American citizens, do not in the least affect the neutrality of the United States. It is true that such articles are subject to seizure outside the territorial jurisdiction of the United States by an enemy of the purchasing government, but it is the enemy's duty to prevent the articles reaching their destination, not the duty of the nation whose citizens have sold them. If the enemy for the time is unable to do this, that is for him one of the misfortunes of war, and his inability imposes on the neutral government no obligation to prevent the sale. Neither the President nor any executive department, it was added, possesses any legal authority to interfere in any way with such trade. 45 The same view was expressed by Secretary Bryan in a letter to Senator Stone in reply to certain complaints that the policy of the American Government in permitting the sale of arms and munitions to Great Britain and France when the Central Powers were unable to purchase was unneutral. In this letter Mr. Bryan stated:

There is no power in the executive to prevent the sale of ammunition to the belligerents. The duty of a neutral to restrict trade in munitions of war has never been imposed by international law or by municipal statute. It has never been the policy of this government to prevent the shipment of arms or munitions into belligerent territory, except in the case of neighboring American republics, and then only when civil strife prevailed.

But while adopting this view, the Government of the United States took the position that the sale of arms, munitions and other war supplies did not include the right to transport supplies to belligerent warships on the high seas. In consequence of rumors during the early months of the war that certain vessels were transporting and furnishing fuel and other supplies from American ports to certain belligerent cruisers at sea, the Department of State issued a circular on September 19, 1914, 46 declaring that vessels engaging in such transactions would not be allowed to depart for the reason that such use of American territory would make it a base of operations for belligerent warships. A base of operations for such purposes would be presumed, the circular stated,

⁴⁶ Text of the circular, this JOURNAL, Supp., Jan. 1915, pp. 124-126.

⁴ Text, ibid., pp. 122-124.

when fuel or other supplies were furnished at an American port to such warships more than once within three months since the war began or during the period of war, either directly or by means of naval tenders of the belligerent or by means of merchant vessels of belligerent or neutral nationality acting as tenders. "The essential idea of neutral territory becoming the base for naval operations by a belligerent," said the circular, "is repeated departure from such territory by a naval tender of the belligerent or by a merchant vessel in belligerent service which is laden with fuel or other naval supplies." But merchant vessels laden with naval supplies clearing from American ports for another neutral port or even to an established naval base in belligerent territory would not be detained. "A neutral can only be charged with unneutral conduct when the supplies furnished to a belligerent warship are furnished directly to it in a port of the neutral or through naval tenders or merchant vessels acting as tenders departing from such port." ⁴⁷

Likewise the American Government took the position that the right of citizens of the United States to sell and export arms and munitions did not include the exportation of weapons the use of which is forbidden by international law. In reply to a communication from the German Ambassador that he had received "information the accuracy of which was undoubted" that eight million cartridges "fitted with mush-room bullets" had been delivered by the Union Metallic Cartridge Company for the use of the British army, the Secretary of State said:

If, however, you can furnish the Department with evidence that this or any other company are manufacturing and selling for the use of the

⁴⁷ In a note of the Austro-Hungarian Government of June 29, 1915, it was complained that the policy of the American Government in preventing the delivery of supplies to German and Austro-Hungarian war vessels on the high seas while Great Britain and France were free to buy in the United States without restriction, was a departure from the spirit of true neutrality. To this charge of inconsistency Secretary Lansing replied in a note of August 12, 1915, that the prohibition of supplies to ships of war rested on the principle that a neutral Power must not permit its territory to become a base for either belligerent. "To permit merchant vessels acting as tenders," said Mr. Lansing, "to carry supplies more often than every three months and in unlimited amount would defeat the purpose of the rule and might constitute the neutral territory a naval base." Furthermore, he stated that he was not aware that any Austro-Hungarian ship of war had sought to obtain supplies from a port in the United States either directly or indirectly.

contending armies in Europe cartridges whose use would contravene The Hague Convention, the government would be glad to be furnished with the evidence, and the President directs me to inform you that in case any American company is shown to be engaged in this traffic he will use his influence to prevent, so far as possible, sales of such ammunition to the Powers engaged in the European War, without regard to whether it is the duty of this government upon legal or conventional grounds to take such action.

Similarly, upon complaint of the German Ambassador that submarines were being built in the United States by a concern in Seattle, for the use of the Entente Powers, the government made an investigation and took steps to prevent further deliveries during the war. Finally, when it was found that the Schwab companies were manufacturing submarines to be shipped in parts to Canada where they were to be assembled and put together, the President decided that such transactions constituted a violation of the spirit of neutrality and a promise was obtained from the president of the company that none of the submarines built in his establishments would be delivered until the close of the war. 48

The policy of the United States when a belligerent, in respect to the

²⁵ Upon reports that hydro-aeroplanes were being built in the United States for the use of the Entente Powers, the German Ambassador in a communication dated January 19, 1915, took the position that they were to be regarded as war vessels the sale of which to belligerents was contrary to Article 8 of the 13th Convention of the Second Hague Conference. They were not mentioned by name in the convention, he said, because there were none in existence at the time. Secretary Bryan in a note of January 29, 1915, dissented from the view that hydro-aeroplanes were vessels merely because they rise from and alight upon the sea. They were, he said, essentially air craft, and could only be used for military purposes in the air. Mr. Bryan also took occasion to call the attention of the ambassador to the fact that air craft had been placed by the German Government on the list of conditional contraband "for which no special treatment involving neutral duty * * had been provided by treaty to which the United States was a signatory or adhering Power." See the correspondence in this Journal, Special Supplement, July, 1915, pp. 366–368.

In February, 1916, however, the Treasury Department made a ruling that hydroaeroplanes (but not aeroplanes) were "vessels" within the meaning of section 4 of the Tariff Act of 1912. There was no necessary inconsistency between the two rulings, because such craft when imported from abroad might very well be brought within the category of "vessels" for purposes of taxation and yet not be treated as war vessels in the sense of the neutrality laws. It does not appear that the German Government took any official notice of the ruling by the Treasury Department.

right of neutrals to sell and export munitions of war, has uniformly been in accordance with the view which it has defended as a neutral, and it does not appear that in any war in which it was a belligerent formal protest by the government against the furnishing of war supplies to the enemy was ever made. During the Civil War, large quantities of arms, munitions, and other supplies were purchased by both belligerents in England and on the Continent. 49 It is true that the case of the United States before the Geneva Arbitration Tribunal of 1872 asserted that "a neutral ought not to permit a belligerent to use the neutral soil as the main if not the only base of its military supplies, during a long and bloody contest, as the soil of Great Britain was used by the insurgents," 50 but this fact was alleged along with numerous others merely as particular evidence of the general unfriendliness and laxity of the British Government in the observance of its obligations of neutrality. Moreover, the refusal of the American Government to admit that the Confederates were entitled to the full rights of belligerents, doubtless led the government counsel at Geneva to contest the legality of a traffic which they would have readily admitted in case the war had been an international conflict instead of an insurrection.⁵¹ But as stated above,

⁴⁹ The facts relating to these transactions are fully narrated in the British and American cases submitted to the Geneva Tribunal. See also a summary in Moore, History and Digest of International Arbitrations, Vol. I, p. 620. Montague Bernard in his Historical Account of the Neutrality of Great Britain during the American Civil War (pp. 330-332) states that the export of arms and military stores from Great Britain to both Northern and Southern ports "went on freely without intermission as long as the contest lasted." Of the amount of the shipments, he says, there is probably no accurate account. He publishes a table of statistics of exportations of arms and munitions to the United States and to the West Indies covering the years 1860-1866. According to this table, the value of exports to the United States rose from £45,076 in 1860 to £999,197 in 1862, after which it declined to £82,345 in 1866. The value of those to the West Indies increased from £6,050 in 1860 to £367,578 in 1862, after which there was a falling off until the value in 1866 amounted to £4,795. The British case before the Geneva Arbitration Tribunal states that "extra supplies of small arms, percussion caps, cannon and other ordnance, saltpeter, lead, clothing, and other war like stores, representing a value of not less than £2,000,000 of which £500,000 were for muskets and rifles alone, were exported from England to the Northern parts of the United States during the Civil War." Moore, I, 620.

⁵⁰ Alabama Claims, Case of the U.S., Part V; p. 125.

⁵¹ It should also be remarked that as regards the second rule of the Treaty of Washington (which declares that a neutral is bound not to permit or suffer either

it does not appear that the American Government ever made a formal protest to the Government of Great Britain or demanded that an embargo be placed on the shipment of arms to the Confederacy.⁵²

belligerent to make use of ports or waters as the base of naval operations against the other or for the purpose of the renewal or acquisition of military supplies or arms) the American case stated that it was not understood "to apply to the sale of military supplies or arms in the ordinary course of commerce, but to the use of a neutral port for the renewal or augmentation of such military supplies for the naval operations referred to in the rule." (Case of the U.S., p. 71.) It was the use of ports or waters as the base of naval operations to which exception was taken. The British case and the British public, however, interpreted the American contention differently, and the British case affirmed that "a neutral government is not bound by force of the above mentioned obligation or otherwise to prevent or restrain the sale within its territory, to a belligerent of articles contraband of war or the manufacture within its territory of such articles to the order of a belligerent purchaser, or the exportation of such articles from its territory for sale to, or for the use of a belligerent." Quoted by Moore, History and Digest of International Arbitrations, I, 599. This was an absolutely correct statement of the view which had always been held by the American Government, and if the case of the United States intended to lay down a different rule this is only an illustration of the fact that states are usually guided by their interests rather than their past practice, that is, they adopt one rule when they are belligerents and a contrary rule when they are neutrals. Cobden in a letter to Senator Sumner of April 2, 1863 (quoted by Mooré, op. cit., p. 620), said, "We are bound to do our best to prevent any ship of war being built for the Confederate Government * * * but with munitions of war the case is different. They are bought and sold by private merchants for the whole world, and it is not in the power of the government to prevent it. Besides, your own government have laid down repeatedly the doctrine that it is not part of the duty of governments to interfere with such transactions for which they are in no way responsible." In another letter of May 22, he deplored "the bungling mismanagement on your side which allowed the two distinct questions of selling munitions of war and the equipping of privateers to be mixed up together." No direct claim was preferred by the case of the United States for injuries sustained by the sale of arms, but "indirect claims" were advanced for losses occasioned by this and other acts which prolonged the war. The arbitrators, however, as is well known, declared them to be inadmissible "upon the principles of international law applicable to such cases."

⁵² It has been recently asserted by Dr. Von Mach and other German sympathizers in the United States that Secretary Seward during the Civil War took the position that British subjects who furnished arms and munitions to the Confederacy were enemies of the United States and were not entitled to the protection of the British Government. This is an error. What Seward actually said was that British subjects who "interfere in our civil war by furnishing arms and munitions of war to the Confederacy in vessels owned or chartered by the pretended insurgent authorities or running the blockade with them * * * were by the law of nations liable to be treated by this government as enemies of the United States, having no lawful claim

It is of course true that there have been a few embargoes laid by the United States on the exportation of arms and munitions. Such prohibitions were laid in 1862 and 1898 when the United States was a belligerent, in the interest of national defence. In 1905 the exportation of arms and munitions to San Domingo was prohibited and, as is well known, a similar embargo in 1912 was placed on shipments of arms and munitions to Mexico, but neither was in fact a neutrality measure.

The practice of Great Britain has been similar to that of the United States. Prohibitions on the sale of arms and munitions have ocasionally been laid in pursuance of treaty stipulations, as in 1822 during the war between Spain and her South American colonies and in 1848 during the war between Denmark and Prussia; 53 or when Great Britain was herself a belligerent, as during the Crimean War and at the outbreak of the present war. The only instance of a departure from the general practice appears to have been the Order in Council of September 30, 1825, issued at the outbreak of the war between Greece and Turkey 54 forbidding for a period of six months the exportation of arms and warlike stores to any port beyond the seas, except by leave of the Crown. No reason for the prohibition was given further than that it was "judged necessary." 55 Notwithstanding the urgent plea of the Duke of Wellington in 1826 that it should be renewed in the interest of neutrality, the government declined to do so. George Canning, Minister of Foreign Affairs, in a letter dated August 4, 1826, explaining the reason for the refusal of the government to renew the order, said:

The Order in Council of last year was suffered to expire, not by me, nor by any other individual member of the cabinet, but upon deliberate resolution of the cabinet, founded on the alleged fact that the prohibi-

to be protected by Her Majesty's Government." Dispatch to Mr. Adams, Minister to England, July 9, 1864. Moore, Digest, Vol. VII, p. 958. The acts to which the Secretary of State here referred were of course of a very different character from the transportation of contraband in neutral vessels to non-blockaded ports.

⁵² The embargo of 1822 was laid in pursuance of an old treaty with Spain by which it was stipulated that neither party would in case of war permit the exportation of arms to the enemy of the other; that of 1848 was laid in consequence of treaties concluded between Great Britain and Denmark in 1670, 1780 and 1814. Calvo, Vol. IV, Sec. 2627, and Gessner, p. 129.

- ⁵⁴ In pursuance of an act of Parliament passed in the 29th year of George II.
- 55 See the text in British and Foreign State Papers, Vol. XII, p. 529.

tion had brought all the principal manufactories (of arms) to ruin. Whether we ought to inflict such a calamity on our own establishment in order to prevent the Greeks from having arms to oppose Ibrahim Pasha is a question of very nice morality. There is no treaty which binds us to interdict the export of arms to the Greeks, nor indeed do I believe that such a stipulation ever found its way into any treaty, except in regard to the Indian tribes and the Spanish colonists in America.

"Neutrality," Canning went on to remark, "is as completely observed by *permitting* export to the belligerents as by *prohibiting* it to both; but to allow it to one and to refuse it to the other may be very wise, or very courteous, or very praiseworthy, but it certainly would not be neutral. But whatever be the merit of the case, my business was to state the law as it is; and I must authorize Stratford so to say, if he is to state the case of his country truly." ⁵⁶

Section 150 of the Customs Consolidation Act of 1853,⁵⁷ apparently still in force, authorizes the Crown in its discretion to prohibit by Order in Council the exportation of arms, ammunition, gunpowder, military and naval stores, etc. But it does not appear that the authority conferred by this act has ever been exercised by the Crown as a measure of neutrality. It has of course been occasionally exercised, as I have said, for purposes connected with the national defence. Thus Earl Granville in a communication of September 15, 1870, to Count Bernstorff, Prussian Ambassador at London, stated that:

It has not been the practice to prohibit it (the exportation of arms) except when the interests of this country, as in the case of self-defence, are directly and immediately concerned in the prohibition.⁶⁸

During the Franco-German War of 1870–1871 Count Bernstorff called the attention of Earl Granville to this act and urged the government to prohibit the sale and exportation of arms and munitions which were being supplied in large quantities to the French Government.⁵⁹ There was no question, he asserted, but that

- ³⁶ Wellington, Despatches, Vol. III, 3d series, p. 364, cited by Gessner, *Droit des Neutres*, p. 131.
 - 57 16 and 17 Victoria, Ch. 107, cited by Phillimore, III, 410.
 - 58 British and Foreign State Papers, Vol. 61, p. 764.
- Text of memorandum of Sept. 1, 1870, in British and Foreign State Papers, 1870-71, Vol. 61, pp. 714-716.

France had wantonly made war on Germany. The verdict of the world and especially the verdict of the statesmen as well as of the public of England has unconsciously pronounced the Emperor of the French guilty of a most flagitious breach of the peace. Germany, on the other hand, entered into the contest with the consciousness of a good cause. She was therefore led to expect that the neutrality of Great Britain, her former ally against Napoleonic aggression, however strict in form, would at least be benevolent in spirit 60 to Germany, for it is impossible for the human mind not to side with one or the other party in a conflict like the present one. What is the use of being right or wrong in the eyes of the world if the public remains insensible to the merits of a cause? Those who deny the necessity of such a distinction, forego the appeal to public opinion which we are daily taught to consider as the foremost of the great powers.

"In the face of the continuous export of arms, munitions, coal, and other war material from Great Britain to France," Count Bernstorff went on to say, "in the face of facts openly made a boast of by the French Minister of War and not denied by the British Government, it is not necessary to prove that the neutrality of Great Britain, far from being impartial to that party which has been pronounced to be in the right, is, on the contrary, such as it might possibly have been if that party had been wrong in the eyes of the British people and government." The nation would be morally responsible for the blood which was being shed through the agency of rapacious individuals who were making fortunes out of a trade which was condemned by the nation. England was "feeding" a war which would have ended sooner had France been left dependent on her own resources; hence the policy of the British Government was if not intentionally, at least practically, benevolent to France, notwithstanding the fact that the verdict of popular opinion was against the cause for which France was fighting.

To this communication Earl Granville replied on September 15,⁶¹ saying that the propositions of the Prussian Ambassador amounted to a demand that British neutrality should be both in spirit and in practice benevolent toward Prussia and consequently, as it would seem, unfavorable toward France. The idea of "benevolent neutrality" he added, was new and its meaning and practical effect would have to be explained.

⁶⁰ Italics are mine.

⁶¹ Text in British and Foreign State Papers, Vol. 61, pp. 759 ff.

The Prussian Ambassador could not be understood as laving down a principle applicable only to the present war; rules of international law could not be confined to exceptional cases, they must be of general application to all wars. If the Prussian proposition were admitted, it would be the duty of every neutral government at the beginning of a war to determine which belligerent was favored by public opinion of its subjects and then assume an attitude of benevolent neutrality toward that belligerent. Such a policy would lead to insuperable difficulties. Where could the line be drawn between a departure from the usual practice, in order to confer material advantages on one belligerent state to the exclusion of the other, and a participation in hostilities? It seems hardly to admit of doubt that neutrality when it once departs from strict impartiality, runs the risk of altering its essence, and the moment a neutral allows his proceedings to be biased by a predilection for one of two belligerents, he ceases to be neutral. The idea, therefore, of benevolent neutrality can mean little less than the extinction of neutrality.62

Earl Granville then turned to the conduct of the Prussian Government during the Crimean War, during the whole of which war "arms and other contraband of war were copiously supplied to Russia by the states of the Zollverein, regular agents for the traffic in which being established at Berlin, Magdeburg, Thorn, Königsberg, Bromberg and other places." No restraint was put upon their operations, notwithstanding the fact that the Prussian Government had issued a decree in March, 1854, prohibiting the transit of arms from other countries through Prussia, and another decree in March, 1855, prohibiting also the transit of other contraband. When the attention of the Prussian Government was called by the Government of Her Majesty to its negligence in enforcing these decrees to the injury of Great Britain, which was then at war with Russia, the Prussian Government replied, not that it was justified in permitting these exports on the principle of "benevolent neutrality," but that it could not interfere with the course of trade,—an answer, said

commenting on this proposition of the Prussian Ambassador, Westlake, in an article on the "Export of Contraband of War" (Collected Papers, p. 374) remarks: "He assumes that the cause of Germany is just, that the public opinion, and even the statesmen of England have recognized its justice and that therefore we should furnish not a strict neutrality, but one which should be calculated to give effective expression to our real or supposed sentiments in favor of his country." Westlake adds that considering the circumstances, the first elements of the act of persuasion would have dictated an appeal in the name of strict neutrality rather than in that of a benevolent neutrality.

Earl Granville, which would "seem to have been based rather on the principle that the first duty of Prussia as a neutral, was to consider the interests of her own subjects, not those of the subjects of a country which had engaged itself in a war with which Prussia had no concern."

Many German writers maintain that the conduct of the British Government during the Franco-Prussian War was not in accord with the spirit of neutrality, 63 but others like Geffcken 64 and von Bar 65 do not consider that the German complaint was well founded. The policy of the British Government was ably defended by Sir William Harcourt under the pseudonym of *Historicus* in a series of letters to the *Times*; but public opinion in England was by no means unanimous in support of the government. During the wars since 1870 British policy has been substantially the same. 66

⁶³ For example, Bluntschli, Dr. Int. Cod., p. 442; Gessner, Kriegs-führende und neutrale Mächte, p. 77; also his Le Droit des Neutres sur Mer, p. 133; Kusserow, "Les Devoirs d'un Gouvernement Neutre," Revue de Droit Int., Vol. VI (1874), p. 64; and Gotha, La question des Exportations d'armes Anglaises (1871). Perels, Droit Mar. Int., discusses the question but expresses no opinion.

⁶⁴ Der Handel mit Waffen und Kriegsmaterial, in Holtzendorff's Handbuch, Bd. IV, p. 692 ff; also his edition of Heffter, p. 350, note.

65 "Observations sur la Contrebande de Guerre," Rev. de Dr. Int., Vol. XXVI (1894), p. 405.

66 In a petition addressed to the President and Congress of the United States during the present war and alleged to have been signed by 1,000,000 American citizens, the statement is made that "on April 23, 1898, after the Spanish-American War had begun, the British Government placed an embargo on munitions of war." This statement, like many others made by the embargo propagandists, is erroneous. The Queen's neutrality proclamation of April 23 warned British subjects that if any of them presumed to do any acts in derogation of their duty as neutral subjects or in violation or contravention of the law of nations, and more especially by breaking a blockade, or by carrying officers, soldiers, despatches, arms, munitions, military stores or articles deemed contraband according to the law of nations, for the use of either belligerent, all such persons so offending, together with their ships and goods would rightfully incur and be justly liable to hostile capture and to the penalties denounced by the law of nations. (See the text in "Proclamations and Decrees of Neutrality in the war with Spain," published by the United States Government, p. 35.) It will be noted that the proclamation did not prohibit British subjects from transporting contraband to either belligerent, and no penalty was prescribed for doing such acts. There is merely the customary warning usually found in neutrality proclamations that those who engage in contraband trade are exposed to the loss of their ships and goods through capture and confiscation by one of the belligerents. The English colony of Jamaica indeed is said to have become the chief source of

French practice has been substantially the same as that of Great Britain and the United States. By an act of the French Parliament of April 13, 1895, the government was authorized to prohibit the exportation of arms by individuals whenever it should judge such a measure to be necessary to the interests of the country. But apparently the authority thus conferred has not been exercised during any of the wars since that date.⁶⁷

In view of the Austrian and German attacks upon the policy of the American Government in permitting the sale and exportation of arms and munitions during the present war, a review of their own practice in some of the more important recent wars will not be inappropriate. The open toleration by the Prussian Government during the Crimean War of the transportation through Prussian territory of large quantities of war supplies from Belgium to Russia, notwithstanding that such traffic had been forbidden by two decrees of the Prussian Government, has already been referred to. During the American Civil War both belligerents bought supplies in Germany and Austria. Soon after the outbreak of the war the Confederate Government sent Major Caleb Huse to Europe to buy and make contracts for arms and munitions. Major Huse subsequently published a pamphlet entitled "The Supplies for the Confederate Army; How they were obtained in Europe and How Paid For," 69 in which he described his purchases in vari-

supply for the Spanish army in Cuba, and except for a mild protest from the American consul at Kingston, no complaint was made by any official of the United States. Benton, International Law and Diplomacy of the Spanish-American War, pp. 195-196

⁸⁷ See Bonfils, *Droit International Public*, p. 891. "During the Russo-Japanese War of 1904–1905," says Bonfils, "the exportation of arms from France to Russia took place freely." The only instances of embargoes by the French Government appear to have been laid on the exportation of arms to Spain during the Carlist uprisings of 1873, 1875, and 1876.

ss Jefferson Davis, Rise and Fall of the Confederate Government, Vol. I, p. 311. Speaking of the purchase of arms in Europe during the Civil War, Bernard (British Neutrality during the American Civil War, p. 331) says, "Many rifles were also imported from Prussia." The British case before the Geneva Arbitration Tribunal in 1872 stated that "large quantities of arms were purchased by the United States in France, Austria, and other neutral countries." Moore, History and Digest of International Arbitrations, I, 620.

89 Boston, T. R. Marvin and Son, 1904.

ous countries of Europe. Concerning his transactions in Austria he says:

There were few arms for sale, even in the arsenals of Europe, which Mr. Cushing had said would be open to the United States and closed to the South. Austria, however, had a considerably quantity on hand and

these an intermediary proposed I should buy.

I knew something of the armament of Austria, having visited Vienna in 1859, with a letter from the United States War Department, which gave me some facilities for observation. At first I considered the getting of anything from an Imperial Austrian Arsenal as chimerical. But my would-be intermediary was so persistent that finally I accompanied him to Vienna, and, within a few days, closed a contract for 100,000 rifles of the latest Austrian pattern, and ten batteries, of six pieces each, of field artillery, with harness complete, ready for service, and a quantity of ammunition, all to be delivered on ship at Hamburg. The United States Minister, Mr. Motley, protested in vain. He was told that the making of arms was an important industry of Austria; that the same arms had been offered to the United States Government and declined. and that, as belligerents, the Confederate States were, by the usage of nations, lawful buyers. However unsatisfactory this answer may have been to Washington, the arms were delivered, and in due time were shipped to Bermuda from Hamburg. Mr. Motley offered to buy the whole consignment, but was too late. The Austrian Government declined to break faith with the purchasers. 70

It has been widely asserted recently by German sympathizers in the United States that during the war between Spain and the United States Germany forbade the exportation of arms and munitions to Spain.⁷¹

⁷⁰ Pp. 26–27. Professor T. S. Woolsey in an article entitled "The Case for the Munitions Trade" (Leslie's Weekly, July 29, 1915), commenting on the above statements of Major Huse, remarks that the reader's suspicions are naturally aroused by the implication that the sale was made by the Austrian Government direct or through the agency of an intermediary. Professor Woolsey adds that: "Quite apart from anything that Major Huse asserted, there is abundant evidence that the Confederates got war supplies from Austria. The subject was frequently mentioned in the correspondence of the Confederate Chief of Ordnance, General Joseph Gorgas, with the Confederate War Department. In the 'Official Records' there are, for the year 1863, various references to war supplies purchased in Austria by Huse, and shipped apparently by Fraser and Trenholme. For example, a letter of Feb. 3, 1863 (in series IV, Volume II, pages 382–384), states that Huse had shipped 21,000 Austrian rifles, with 32 guns and 10,000 shrapnel shells for them. At the same time there were waiting in Vienna munitions to the value of £117,500, to be shipped when payment was made by the Confederate Government."

71 This assertion was made by Representative Vollmer in the House on March 4,

This assertion was based on a passage in the Autobiography of Andrew D. White,⁷² but the facts show that the contrary was the case. Dr. White in a recent letter explaining the incident to which he refers in his Autobiography, states that the particular vessel which he requested the German Foreign Office to search, although laden with contraband, "after a brief wait proceeded on her way" (to Spain), and that "our agents at Hamburg informed me later that during the entire war, vessels freely carried munitions from German ports both to Spain and to the

1915; (Cong. Record, App. p. 736). See also the New York Evening Mail of January 27, 1916, and the petition of 1,000,000 American citizens (Cong. Record, January 27, 1916, p. 1743). Also the Fatherland of July 9, 1916; and the Boston Transcript of January 31, 1916. In an issue of the Fatherland in August, 1915, we find the following: "During our war with Spain * * one belligerent appealed to a friendly Power to stop the export of munitions of war from its teeming war factories. That appeal came from the United States and was addressed to Germany! Did Germany justify its traffic in murder tools when the United States appealed to her to observe a benevolent neutrality? Let Andrew D. White answer the question, as he answers it in his Autobiography." Note also the following from an interview given by Field Marshal Von Moltke to a correspondent of the Washington Post, reprinted in the Continental Times of August 16, 1915: "During your various wars in North America your government never had reason to complain of arms or munitions being furnished by us to your enemies. Spain, for instance, long before its war with the United States freely purchased Mauser rifles from our German manufacturers; but the moment war broke out between Spain and the United States and our neutrality was declared, our government shut down on any further exportation of arms to Spain, Cuba, Porto Rico or the Philippines. Your former Ambassador to us, Dr. Andrew D. White, who served here during that war, can attest this fact."

⁷² Chapter XVI, pp. 168-169. The passage is as follows: "As to the conduct of Germany during our war with Spain, while the press, with two or three exceptions was anything but friendly, and while a large majority of the people were hostile to us on account of the natural sympathy with a small Power battling against a larger one, the course of the Imperial Government, especially of the Foreign Office under Count von Bülow and Baron von Richthofen, was all that could be desired. Indeed, they went so far on one occasion as almost to alarm us. The American consul at Hamburg having notified me by telephone that a Spanish vessel, supposed to be loaded with arms for use against us in Cuba, was about to leave that port, I hastened to the Foreign Office and urged that vigorous steps be taken, with the result that the vessel, which in the meantime had left Hamburg, was overhauled and searched at the mouth of the Elbe. The German Government might easily have pleaded, in answer to my request, that the American Government had generally shown itself opposed to any such interference with the shipments of small arms to belligerents, and had contended that it was not obliged to search vessels to find such contraband of war, but that this duty was incumbent upon the belligerent nation concerned."

United States, and that neither of the belligerents made any remonstrance. When the Department of State learned of the incident, it instructed the American Ambassador to ascertain whether or not there were "any laws or regulations in force in Germany forbidding the shipment of contraband of war," in order that if there existed such laws or regulations the American Government might be so informed so as to avoid the embarrassments which might arise if it should decide to protest against the action of neutral governments in permitting contraband articles to be shipped from their ports. The Ambassador reported that there were no such laws or regulations in force, and the matter was therefore dropped. It appears that the German Government never issued any proclamation of neutrality, that it never took any steps whatever to prevent the sale and exportation of arms and munitions to either belligerent, and that in fact German manufacturers sold such articles freely to the Spanish Government.

During the Boer War large quantities of war material were sold to the British Government by manufacturers and merchants of both Austria and Germany. Although the sympathies of the people of Austria and Germany were overwhelmingly on the side of the Boers, that did not "prevent England from obtaining in Germany the quick-firing guns which she needed so badly and from Austria the big howitzers which it was thought would be required for the siege of Pretoria." ⁷⁵

73 This letter is dated October 6, 1915, and was addressed to W. B. Blake of New York City. It was printed in the New York *Times* of January 29, 1916, and in the *Fatherland* of July 9, 1916.

⁷⁴ See extracts from the correspondence relating to the incident and appropriate comment by William C. Dennis in the Annals of the American Academy of Political and Social Science, July, 1915, pp. 13–14; see also an official statement of the Secretary of State regarding the matter, published in the daily press of April 23, 1915.

75 Spaight, War Rights on Land, p. 478. See the statistics concerning the exportations of arms, munitions and other war supplies from Germany into England during the years 1899–1901, compiled by Dr. C. N. Gregory and published in an article entitled "The Sale of Munitions of War by Neutrals," Annals of the American Academy of Political and Social Science, July 1915, pp. 190–191, and in an article by the same author in the preceding issue of this JOURNAL. Dr. Gregory quotes from a letter from the British Embassy addressed to him on April 27, 1915, in which it was said that "When the Boers were shut off from supplies by sea, Great Britain got from Germany 108 fifteen-pound quick-firing guns and 500 rounds per gun. They were purchased from Ehrhardt by private negotiation." See also tables of

German and Austrian dealers were of course quite willing to sell to the Burghers of the South African Republics, although the situation of the Boers was almost identical with that of Germany and Austria today; that is to say, they were commercially isolated by the British navy and were prevented from buying arms from neutrals. The German and Austro-Hungarian Governments did not then consider that "parity of treatment" required them to prohibit the sale and export of war supplies for the use of the British forces. They proceeded on the principle which the Government of the United States then laid down

statistics of German and Austro-Hungarian exports of arms and munitions to Great Britain during the years 1899–1902, printed as an appendix to Secretary Lansing's note of August 12, 1915, in reply to the Austro-Hungarian note of June 29 in respect to the sale of arms and munitions during the present war. In this note the Secretary of State says, "Germany sold to Great Britain hundreds of thousands of kilos of explosives, gunpowder, cartridges, shot and weapons; and it is known that Austria-Hungary also sold similar munitions though in smaller quantities." This JOURNAL, Special Supplement, July, 1915, pp. 166, 172.

Aked and Rauschenbusch, in their pamphlet entitled "Private Profit and the Nation's Honor," remark that "the small and peaceful Boer Republics had no chance to profit by our war supplies. It was England that bought them and used them against the Boers." But, as stated above, England also purchased freely war supplies in German markets. If it was not contrary to the spirit of neutrality for Germany to permit sales to the English when the Boers were cut off from access to German markets, why is it a violation of neutrality for the American Government to permit sales to Great Britain during the present war when the situation of Germany is similar to that of the South African Republics during the Boer War? There is no substantial difference between the policy of Germany during that war and that of the United States during the present war.

The American Minister to The Netherlands that the shipment of war materials from the United States on a large scale to Great Britain was contrary to the law of nations, and urged him to remonstrate with the American Government against the continuance of the traffic. Sceretary Hay on December 15, 1899, replied to the communication of the American Minister, saying that in view of the fact that the law and practice of the United States was then settled in favor of the right of neutrals to sell and export contraband goods to belligerents, it was not considered necessary to investigate the charges of Dr. Muller. Again in 1901, when one Samuel Pearson, on behalf of the Transvaal, sought an injunction in the Circuit Court of the United States for the Eastern District of Louisiana to restrain the exportation of mules, arms and munitions of war for the use of the British forces in South Africa, the court refused to grant the injunction on the ground that it had no jurisdiction. In the course of his opinion the judge reviewed the law and practise regarding the right of American citizens to sell and

and upon which it is now acting under identical circumstances. Likewise during the Russo-Japanese War there were large exportations of arms, artillery, munitions and coal from Germany to Russia,⁷⁸ and it was charged that the German Government failed to prevent, if it did not directly or indirectly encourage, the sale to Russia of a number of transatlantic steamers belonging to its auxiliary navy, and that it permitted the exportation overland of torpedo boats to Russia, the several parts of the vessels being exported as half finished manufactures and put together in Libau, Russia,—this for the purpose of disguising the real nature of the transactions and thus avoiding the charge of non-conformity to the technical rules of neutrality relating to the sale of war vessels to belligerents.⁷⁹

During the Turco-Italian War, German arms and munitions were sold and exported in large quantities to the Ottoman Government, and during the Balkan Wars German and Austrian markets were the principal sources of supply for all the belligerents. It is probably safe to say that no other country has developed such an extensive system of industries for the manufacture of war material as Germany, or has supplied the needs of belligerents on such a large scale. Indeed, there appears to be no instance in which the German Government ever prohibited the sale and exportation of such articles to belligerents, ⁸⁰

export arms and munitions to belligerents, and concluded that belligerents had an undoubted right to purchase war supplies in the United States and transport them abroad for their use. See this JOURNAL, July, 1915, pp. 691–694.

⁷⁸ According to an editorial in the Baltimore Star, German exportations of arms and munitions to Russia increased from 64,680 pounds in 1903 to 131,340 in 1904, and the total of such exports for the year 1905 was ten times as large as during the previous year and twenty times as large as for 1903, or 1,655,940 pounds. There was also a large increase in the exportation of copper, which was on the Russian list of contraband. In December, 1904, 3,000,000 pounds of ammunition consigned to a Russian naval base and concealed in bales of wool brought on the backs of camels from Kalgan were seized by the Japanese. The newspapers of the time contained frequent reports of large contracts between the Russian Government and German manufacturers for the delivery of war material for the use of the Russian Government.

⁷⁰ These charges were made by certain Socialist members of the Reichstag and were widely published in the newspapers of the time. See Hershey, International Law and Diplomacy of the Russo-Japanese War, pp. 91–92.

⁸⁰ The embargo during the Crimean War, referred to above, applied only to the transit through Prussia of arms from foreign countries.

and but one instance in which Austria-Hungary has done so.81 Finally, it is well known that Germany purchased military and other supplies in the United States during the early weeks of the present war and until the American supply was cut off by Great Britain. Moreover, it may be added that after the entrance of Turkey into the war, large quantities of German-made war supplies were shipped through the neutral territory of Roumania for the use of the Ottoman Government, and when in the middle of the year 1915 the Roumanian Government, in pursuance of the Hague Convention Respecting the Rights and Duties of Neutrals (Arts. 2-5), issued an order prohibiting the transit of arms and munitions through its territory for the use of belligerents, the German Government complained that the embargo was an unneutral act resorted to with a view of aiding the Allies, under whose pressure (after the entrance of Italy into the war) the Roumanian policy of benevolent neutrality toward Germany had been abandoned. The inconsistency of the German complaint against the Roumanian Government for adopting an attitude which the German Government and its sympathizers in this country have demanded of the American Government is, of course, evident.

Thus it will be seen that the general practice of neutral states has been to permit their nationals to sell and export arms and munitions to belligerents, and this privilege has been freely exercised during most of the wars of the past. There have, however, been a few departures from this general practice. Thus, during the Franco-German War of 1870, Belgium, Switzerland, Austria-Hungary, Denmark, Spain, Italy, the Netherlands, and Japan are said to have issued proclamations forbidding the transportation of arms and munitions to both belligerents.⁸²

Upon the outbreak of the war between Spain and the United States in 1898, the Government of Brazil "prohibited absolutely" the exportation of war material from Brazilian ports to those of either belligerent,

⁸¹ This was during the Franco-German War of 1870-1871.

⁸³ Bluntschli, Sec. 766, and Rivier, *Droit des Gens*, Vol. II, p. 412. Rivier says all the states above-mentioned issued such prohibitions, but Kleen does not include Austria-Hungary, Denmark, Spain, Italy, or the Netherlands in the list which he gives. *Lois et Usages*, I, 382, and *Contrebande de Guerre*, pp. 52, 68. Bonfils, Secs. 1472 and 1474, mentions only Belgium, Switzerland, and The Netherlands.

under the Brazilian flag or any other flag.⁸³ Likewise the King of Denmark, by a proclamation of April 29, forbade Danish subjects "to transport contraband of war to either of the belligerent Powers," although it did not prohibit the sale thereof.⁸⁴ The Governor of Curaçao, acting on the instructions of the Dutch Government, published a decree forbidding the exportation of arms, munitions, or other war materials to either belligerent.⁸⁵ The Portuguese Government by a decree of April 29, declared that articles of lawful commerce belonging to the subjects of belligerent Powers might be transported under the Portuguese flag, and that such articles belonging to Portuguese subjects could be transported under the flag of either belligerent, but "goods which could be considered as contraband of war" were expressly excluded from this privilege.⁸⁶

Since the outbreak of the present war, embargoes on the exportation of arms have been laid by a number of states, although Brazil appears to have been the only one outside Europe that has adopted such a policy.⁸⁷ The other embargoes were laid by various neutral states of Europe, notably Denmark, Norway, Sweden, Switzerland, Spain, and the Netherlands. They have, however, been erroneously regarded as neutrality measures. In fact, they were laid partly under pressure from Great Britain, with a view to protecting their oversea commerce from the measures adopted by the British Government,⁸⁸ and partly for the purpose of conserving their own supply of arms, munitions, and other commodities, with a view to the eventual possibility of their being forced into the war.⁸⁹

⁸² Proclamations and Decrees During the War with Spain, p. 13.

⁸⁴ Ibid., p. 22.

⁸⁵ Ibid., p. 27.

^{*} Ibid., p. 61.

⁸⁷ It appears that Brazil has general rules of neutrality governing trade in contraband, Article IV of which "absolutely forbids" the exportation of arms and munitions of war from Brazil to any belligerent under the Brazilian or any other flag. See an article by Senor Da Gama, Brazilian Ambassador to the United States, in the Annals of the American Academy of Political and Social Science, July, 1915, pp. 147 ff.

⁸⁸ See my article on Contraband, Right of Search, and Continuous Voyage, in this Journal for April, 1915, p. 393.

³⁰ Compare the remarks of Prof. J. B. Moore, who, referring to the above mentioned embargoes, says "in reality they are essentially regulations of a domestic nature,

It is submitted, therefore, that no argument in favor of an embargo on the sale and exportation of arms, as a measure of neutrality, can be drawn from these precedents.

But it is argued that the situation to which the present war has given rise is wholly different from that in any preceding war, and hence the same standards of neutrality cannot be applied. Thus in a memorandum delivered by the German Ambassador at Washington, on April 4, 1915, to the Secretary of State, it was said that,

The situation in the present war differs from that of any previous war. Therefore any reference to arms furnished by Germany in former wars is not justified, for then it was not a question whether war material should be supplied to the belligerents, but who should supply it in competition with other nations. In the present war all nations having a war material industry worth mentioning are either involved in the war themselves or are engaged in perfecting their own armaments, and have therefore laid an embargo against the exportation of war material. The United States is accordingly the only neutral country in a position to furnish war materials. The conception of neutrality is thereby given a new purport, independently of the formal question of hitherto existing law. In contradiction thereto, the United States is building up a powerful arms industry in the broadest sense, the existing plants not only being worked but enlarged by all available means, and new ones built. The international conventions for the protection of the rights of neutral nations doubtless sprang from the necessity of protecting the existing industries of neutral nations as far as possible from injury in their business. But it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state, such as is the development of the arms industry in the United States, the business whereof, under the present conditions, can benefit only the belligerent Powers.

The theoretical willingness of American manufacturers and merchants to sell to Germany, said the Ambassador, did not alter the case. The fact was that sales and deliveries were being made to but one side, that a new and vast industry had suddenly sprung into existence under the artificial stimulus of the English, French, and Russian demand for arms and munitions, and that the United States had been transformed into

employed for the purpose of preserving a proper supply of articles, even arms and munitions of war, in the countries concerned." Annals of the American Academy of Political and Social Science, July, 1915, p. 146.

a veritable arsenal for the supply of the armed forces of Germany's enemies, a supply upon which Germany and her allies could not draw.

The Austro-Hungarian Government likewise, in a note of June 29, 1915, complained that the industry of manufacturing arms and munitions in America had "soared to unimagined heights."

In order to turn out the huge quantities of arms, ammunition, and other war material of every description ordered in the past months by Great Britain and her allies from the United States, not only the full capacity of the existing plants, but also their transformation and enlargement, and the creation of new larger plants, as well as a flocking of workmen of all trades into that branch of industry; in brief, farreaching changes of economic life encompassing the whole country, became necessary.

It will of course be readily admitted that the situation to which the. present war has given rise is quite different from that created by the smaller wars of the past, but in fact the difference is not one of principle, but rather a difference of degree. If the legal right of neutrals to sell arms and munitions to belligerents be admitted, and apparently neither the German nor the Austro-Hungarian Government has denied the existence of this right as a general principle of law, so it would seem difficult in practice to introduce a distinction between the right to sell and export in small quantities and to sell and export in large quantities. Likewise the distinction between the sale of supplies produced by establishments already in existence at the outbreak of the war and the sale of those produced by newly created industries is not a sound principle for distinguishing between neutral and unneutral conduct. effect, the distinction is similar to that made by Bluntschli and the German General Staff in the Kriegsbrauch im Landkriege between sales en gros and sales en détail. Like most quantitative distinctions, it is more or less arbitrary, rests upon no juridical principle, and the attempt

⁵⁰ The German Government, in a note of December 15, 1914, had already stated that "under the general principles of international law no exception can be taken to neutral states letting war material go to Germany's enemies from or through neutral territory."

Compare also the remarks of Dr. Dernburg before the American Academy of Political and Social Science in the Annals of the Academy, July, 1915, p. 195: "I want to state here most emphatically that Germany at no time has disputed the right to ship and sell arms."

to apply a rule based on such a distinction would in practice lead to insuperable difficulties, as the German writers Geffcken and von Bar, as well as many others in England and America, have pointed out.

Likewise, the contention put forward by the German and Austro-Hungarian Governments that the conception of neutrality has been given a "new aspect" by the fact that in the present war the markets of but a single state have become the chief, if not the sole, source of foreign supply for the belligerents, cannot be admitted as sound. Such a contention rests on the assumption that traffic in arms and munitions is legitimate, so long as the markets of other neutral Powers are open to belligerents, but that it ceases to be consistent with the spirit of neutrality the moment the number of such states is reduced to one. It is tantamount to maintaining that while all or several neutral Powers may permit the sale and exportation of war materials, one alone may not do so.

If particular states, either in consequence of a desire to observe a stricter attitude of neutrality than international law requires, or out of considerations affecting their own national interests, prefer to prohibit the exportation of arms and munitions from their territory, that constitutes no logical reason why other states differently situated, it may be, are bound to do likewise.

Similarly, the view recently advanced that since the quantity of arms and munitions sold to belligerents in former wars was comparatively small, the practice in those wars cannot be regarded as precedents to justify a traffic of such proportions as that which the business has assumed in the present war, ignores the difference in the magnitude of those wars and that of the present conflict. It has been stated by the British Minister of Munitions that less ammunition was used by the British forces during the entire Boer War than was consumed in a single well known battle during the present war. To hold that it is not unneutral for a state to permit its subjects to sell arms and munitions to belligerents so long as the magnitude of the war is not such as to create a demand for large quantities of such supplies, but that it becomes unneutral when by reason of the widespread character of the war the resulting demand assumes large proportions, is again to introduce

quantitative distinctions in the place of distinctions founded on juridical principle.

In cases of world-wide wars like the present conflict, the recourse to neutral markets will naturally be larger, and it is impossible to fix a point beyond which permission to resort to those markets ceases to be consistent with neutrality, if recourse in any degree is to be recognized as lawful.⁹¹

In a note of July 16, 1915, the German Imperial Government made a plea for an equalization of advantages as between the Entente Allies and the Central Powers:

While a trade in arms existed between American manufacturers and Germany's enemies estimated at many hundred million marks, the German Government had not made any charge of a formal breach of neutrality. The German Government could not, however, do otherwise than to emphasize that they were placed at a great disadvantage through the fact that the neutral Powers have hitherto achieved little or no success in the assertion of their lawful right of trade with Germany, whereas they make unlimited use of their right to tolerate trade in contraband with England and Germany's other enemies. Admitting that it is the express right of neutrals not to protect their lawful trade with Germany, and even to allow themselves knowingly and willingly to be ordered by England to restrict such trade, it is on the other hand not less their good right, although unfortunately not exercised, to stop trade in contraband, especially the trade in arms, with Germany's enemies. In regard to the latter point (contraband trade especially in war materials by neutral merchant vessels), the German Government ventures

91 In fact, the quantity of arms and munitions exported during the present war has not been larger in proportion to the total amount consumed by the various belligerents than the sales and exportations during previous wars. Thus the records of the Department of Commerce show that during the first nine months of the war the United States furnished the Entente Allies with less than a week's supply of ammunition. It is stated that up to May 1, 1915, only \$27,000,000 worth of munitions and \$1,142,000 worth of fire arms had been exported since the beginning of the war. At the outbreak of the war there were no private concerns in the United States which manufactured army rifles such as were then generally used. On account of the necessity of installing new equipment and introducing new processes, the output of American manufactories was comparatively small during the early months of the war. Even as late as July, 1916, it was stated that American plants were turning out only 19,000 rounds of artillery ammunition per day whereas England was using 60,000 rounds and France 125,000 rounds daily. This statement, if true, disposes of the contention that the United States is supplying the bulk of the ammunition used by the Entente armies.

to hope that the American Government upon reconsideration will see their way clear to a measure of intervention in accordance with the spirit of true neutrality.

Again in the memorandum of April 4, 1915, the Imperial Government observed that, "It is necessary to take into consideration not only the formal aspect of the case, but also the spirit in which the neutrality is carried out;" and further that "If it is the will of the American people that there shall be a true neutrality the United States will find the means of preventing this one-sided supplying of arms, or at least of utilizing it to protect legitimate trade with Germany, especially that in foodstuffs." 92 Likewise the Austro-Hungarian Government in a note of June 29, 1915, raised the question whether in view of the "absolute exclusion" of Germany and Austria-Hungary from the markets of America, it "would now seem possible, even imperative, that appropriate measures be adopted toward bringing into full effect the desire of the Federal Government to maintain an attitude of strict parity with respect to both belligerent parties."

It will be seen from these extracts that the German and Austro-Hungarian Governments did not allege any violation of the letter of the law governing the rights and duties of neutrals, but they contended that the sale of arms to one belligerent when the fortunes of war have deprived the other of access to neutral markets is contrary to the spirit of neutrality, and the inequality of opportunity thus resulting should be removed by the neutral through an embargo on sales to all belligerents; that is, a "strict parity" must be restored and the disadvantages of one eliminated by depriving the other of the fruits of a victory which he has won through his superior naval power. To this somewhat extraordinary contention, Secretary Lansing replied in a note of August 12, 1915, that the American Government could not accede to such a proposition:

The recognition of an obligation of this sort, unknown to the international practice of the past, would impose upon every neutral nation a duty to sit in judgment on the progress of a war and to restrict its commercial intercourse with a belligerent whose naval successes prevented the neutral from trade with the enemy. * * * Manifestly

⁹² The italics are mine.

the idea of strict neutrality now advanced by the Imperial and Royal Government would involve a neutral nation in a mass of perplexities which would obscure the whole field of international obligation, produce economic confusion and deprive all commerce and industry of legitimate fields of enterprise, already heavily burdened by the unavoidable restrictions of war.

As has been said, the situation of the South African Republics during the Boer War was practically identical with that of Germany and Austria-Hungary today. Great Britain had succeeded in commercially isolating those republics and depriving them of access to neutral markets, but the German Government at the time did not consider it a violation of the spirit of neutrality to permit German manufacturers to sell and export arms to one of the belligerents when the fortunes of war had deprived the other of access to German markets. As Secretary Lansing in his reply to the Austro-Hungarian remonstrance pertinently remarked,

If at that time Austria-Hungary and her present ally had refused to sell arms and ammunition to Great Britain, on the ground that to do so would violate the spirit of strict neutrality, the Imperial and Royal Government might with greater consistency and greater force urge its present contention.

Furthermore, the "parity" argument of the Central Powers, if carried to its logical limits, can be turned against them in the present war. As is well known, Germany has succeeded in acquiring possession of . the larger portion of the coal, iron, steel, and similar industries of France, and thereby deprived the French of their domestic supply of raw materials for the manufacture of arms and munitions. Germany having thus through her superior military strength cut off to a large degree France's local supply of war materials, cannot justly complain that Great Britain through her superior naval power has deprived Germany of access to neutral markets. Nevertheless, it has been seriously argued that in permitting the sale of arms and munitions to France, the Government of the United States has thereby deprived Germany of the full advantage which she has gained in acquiring control of the industries upon which the French local supply is dependent. But it is submitted that if considerations of strict neutrality require the United States to prevent exportation of arms to Great Britain and France in order not to

deprive Germany of the advantage thus obtained, does not that same neutrality require the United States to refrain from the adoption of a policy which would deprive Great Britain of the advantage which she has gained over Germany through the superiority of her naval power? ⁹³

But apart from the special circumstances of the present war, which, it is urged, make it desirable to alter the existing rule, it is argued that there are general considerations of morality and public policy which condemn the present practice. The furnishing of arms and munitions to belligerents, it is said, is contrary not only to the spirit of genuine neutrality, but also to the best standards of international ethical conduct as well as to sound principles of national and international policy. Thus Senator Works of California, in a speech in the Senate on January 27, 1916, said:

I believe the trade to be immoral and demoralizing to the people of the United States. I believe that most of the complications that have grown up between this and foreign nations now at war have been the result of the trade in munitions of war. I believe that if it had not been for the fact that we were dealing in that nefarious trade the people upon the *Lusitania* would not have lost their lives.

We have, in effect, made our country a party to the war across the ocean. It is our ammunition, our shot and shell, that are taking the lives of the citizens and subjects of friendly nations in Europe. We cannot justify ourselves in that position or in that trade by saying that it is allowed by the laws of neutrality. There is something higher that should control the people of the United States than the mere strict law of neutrality.⁹⁴

93 Adverting to the German contention that the United States should prohibit the sale of arms and munitions to the Entente Allies because, among other reasons, the effect is to deprive Germany from reaping the advantage which she has gained by the cutting off of the chief source of France's local supply, the New York Times, in a recent editorial, remarks, "Just so. It is the fortune of war. By the fortune of war France is unable to make all her own supplies. By the fortune of war Germany is unable to get supplies from us. Therefore, it is our duty to stop these sales to France which are 'thoroughly within our legal rights' so that we may enable Germany to reap the full advantage of that other fortune of war by which France is unable to get her munitions except from us. The fortune of war, he says, has made us an ally of France, and it is our duty to take immediate action to change that situation by making ourselves an ally of Germany. Having crippled France by the fortune of war, Germany could conquer her if we would only cripple her further by giving up our 'legal rights' in Germany's interest."

⁹⁴ Congressional Record, 64th Cong., 1st sess., p. 1797. Compare also the remarks of Senator Kenyon to the same effect, *ibid.*, p. 1793; of Senator LaFollette, *ibid.*, p. 1800;

It is the veriest cant and hypocrisy, we are told, for a people to pray for peace on Sunday and during the rest of the week devote their energies and resources to the manufacture of the instruments of death for the perpetration of a struggle in which millions of lives are being sacrificed. Besides prolonging the duration of the war and swelling the volume of the rivers of blood, the effect of such traffic is to array citizens of a common country against one another, arouse animosities, provoke the enmity of foreign nations, and lay the foundations for future international controversies. 96

of Senator Ashurst, *ibid.*, p. 1796; of Senator Robinson, *ibid.*, p. 1797; of Representative Ricketts, *ibid.*, pp. 2657–2658; of Senator Hitchcock, *ibid.*, 63rd Cong., 3rd sess., p. 3938; of Representative Porter, *ibid.*, App. pp. 583–585; of Representative Vollmer, *ibid.*, App. pp. 735–736. See also a pamphlet entitled "Private Property and the Nation's Honor", by Aked and Rauschenbuch; Burgess, the European War, Ch. VII; an article by von Mach, "The German View Point", Boston *Transcript*, April 14, 1915; and Butte, Proceedings of the American Society of International Law, 1915, p. 129.

In a recent issue of the Boston *Transcript*, Professor Kuno Franke poses the following questions, which, however, he made no attempt to answer:

"Is it moral, from the national point of view, that the United States, a nation which officially stands for the policy of peace and against excessive armament, should now permit within its own borders the manufacture of arms on so large a scale that this industry bids fair to become one of the leading industries of the country?

"Is it moral, from the national point of view, that our Government should permit the rise in this country of a set of capitalists, whose interests are exclusively or predominantly identified with war, and which therefore, by its own self-interest, is bound to abet and to foster the war spirit among masses of people?

"Is it moral, from the international point of view, that this country, while officially holding aloof from the gigantic carnage which is now devastating Europe, should, as a matter of fact, through its continued shipment of arms make itself a participant in this destruction, and indeed thrive upon it?"

⁹⁵ Compare the remarks of Representative Vollmer in the House on March 4, 1915 (Cong. Record, p. 735), who stated that he had introduced a resolution to prohibit the "infamous traffic" of exporting arms and munitions of war because "as an American I did not want my country, in the eyes of all contemporaries and of all posterity, to stand as the arch hypocrite of the world * * * a country that prays for peace while her pockets are filled with blood money."

²⁶ "I believe," said Senator Hitchcock in the Senate on February 17, 1915 (Cong. Rec., p. 3939), "the United States should put a stop to this horrible traffic, not because of the effect it may have upon the European War, but because of the effect that it is having among our own people, the effect it is having in stirring up hate, in arousing prejudices, in destroying neutrality, and in dissipating the American spirit, which before the war was welding us into a common people."

Furthermore, it is asked, why should it be regarded as unneutral for a government to sell arms and munitions to belligerents, but entirely consistent with neutrality for a government to allow its citizens to do so? Why maintain a double standard of conduct, one for the state and another for the citizens who compose it? "International Law," said Senator Hitchcock in the Senate on February 17, 1915, "is entirely out of harmony with the spirit of the age in permitting this traffic. * * * It relates to a time and has its roots in an age when war was the legitimate method of settling international disputes."

Space does not permit an extended discussion of all these points, but I venture to offer a few observations on some of them.

First of all, it is submitted that the presumption must be largely in favor of the morality of a rule of international conduct which has been approved by the leading jurists and text writers from Gentilis to the present time, with only a few exceptions, and which has been generally followed in practice by states and sanctioned by international agreement to which practically all the states of the world are parties. If authority, practice, and convention count for anything in determining the general consensus in respect to the value of a rule of conduct, the present rule rests on solid foundations of morality and public policy, national and international.

I venture also to raise the question whether ethically there is any substantial ground for a distinction between the sale of arms and munitions in time of war to be used immediately by a belligerent for killing his enemies, and sales in time of peace for the purpose of putting him in readiness for killing possible enemies at some future time. If war is admitted to be a legitimate mode of settling international controversies,—and Senator Hitchcock, who asserts the contrary opinion, does not tell us when it ceased to be so recognized,—it seems difficult to deny the morality of making and selling the instruments by which it is carried on; and if it is not immoral to furnish them before an army takes the field, it is not immoral to do so afterwards.⁹⁸

⁹⁷ Cong. Record, page 3938.

⁸⁸ Cf. on this point the remarks of Professor T. S. Woolsey in an article entitled "Case for the Munitions Trade," Leslie's Weekly, July 29, 1915.

General Von Moltke, in an interview with Edwin Emerson, published in the

Moreover, if it is ethically permissible to furnish a belligerent with cloth for making uniforms, cotton and other materials for making explosives, coal for supplying warships, mules for drawing artillery, and other materials without which war cannot be carried on, why is it any more reprehensible morally to sell him arms and munitions? Ethically there is no sound basis for such a distinction; yet most of the proposed embargo measures recently introduced in Congress proposed to prohibit only the sale and exportation of arms and munitions.

No line of distinction, as the late Professor Westlake once declared, can be drawn between the sale of munitions, on the one hand, and other articles, which, though not directly employed for killing men, are essential to belligerents in the carrying on of war. "No principle can turn on the degree of utility of the article sold, or on the degree of proximity in which its employment contributes to the physical act of killing or wounding." ⁹⁹ If the principles of morality or considerations

Washington Post and reproduced in the Continental Times of August 16, 1915, remarked that, "There is a great difference between selling arms to outsiders during peace and between furnishing arms to actual belligerents warring against one's own friends. In everyday life a licensed gunsmith is not only permitted but expected to sell arms across his counter to all lawful customers: but he is not expected to run out of his shop during a street fight to thrust loaded pistols into the hands of a combatant, no matter how friendly he may feel towards him. Just so, our Krupp and Mauser works have sold arms to all the world during peace times, even as the Creusot works in France, the Armstrongs in England, or the Winchester and Remington companies in America have done. There is no objection to this in times of peace; but in the midst of war it is quite another matter."

Unfortunately for his argument, there is also a "great difference" between the act of the neutral trader who sells arms in his own shop to all belligerents who wish to purchase, and the gunsmith who runs out of his shop during a street fight and thrusts a pistol into the hands of one of the combatants.

⁹⁹ Collected Papers, pp. 379–380. *Cf.* also the following remarks of Senator Lodge in a recent address before the Worcester Chamber of Commerce: "If it is wrong to ship munitions of war, is it right to ship copper and steel? They will be turned into cartridges and munitions of war when they reach the other side. How about barbed wire? It is true they do not use barbed wire to shoot men down with, but I venture to say that barbed wire entanglements on the western front in France have caused as many deaths as artillery or small arms.

"If you cut off the shipments of munitions of war, you must cut off the shipment of every form of export to belligerent Powers. You must cut off the shipment of shoes, of cloth, of every single thing that goes to help the soldier in the way of clothing or even help the non-combatant."

of neutrality require prohibition of the sale of the one class of articles they require equally a prohibition of the sale of the other; but if both classes should be prohibited, where is the line between prohibited and innocent goods to be drawn? As Earl Granville pointed out in his note of September 15, 1870, to Count Bernstorff,—

In the American Civil War no cargoes would have been more useful to the Southern States than cloth, leather, and quinine. It would be difficult for a neutral and obviously impossible for a belligerent to draw the line. Moreover, articles invaluable to a belligerent at one time may be valueless at another, and *vice versa*. Is the neutral to watch the shifting phases and vary his restrictions in accordance with them? ¹⁰⁰

In view of the source from which the recent attack upon the trade in arms and munitions emanated, it may be interesting to quote the views of a highly respected German jurist, and one of the most eminent authorities on international law, Professor von Bar, of Göttingen. After dwelling at length upon the serious injuries which an embargo would inflict upon the industries of neutral nations, as well as the difficulties which would be encountered in the enforcement of such a measure, he proceeds to consider the moral aspects of the question. On this point he says:

It is wrong, therefore, to denounce, as has often been done, the sale of arms by neutrals to belligerents, as a business which pollutes the hands and honor of neutral countries. This phrase has no more force than a tirade launched against a fire insurance company, on the ground that it is engaged in a miserable business which draws its profits from the misfortunes of others.

"True progress," von Bar continues, "consists not in prohibiting trade in contraband goods, as Kleen and Brusa would do, but rather in abolishing the right of belligerents to interfere with such trade except through the exercise of the right of blockade." The argument sometimes advanced that the furnishing of arms and munitions to belligerents serves to prolong the duration of wars and that a trade which draws its profits from bloody battles is condemned by the interests of humanity, von Bar pronounces as specious, and he quotes Lorimer as having pointed out "with his usual sagacity" that the object of war is not a

100 Brit. & Foreign State Papers, Vol. 61, p. 765.

temporary cessation of hostilities, but a durable peace, and it is therefore wrong to force a nation to quit fighting by refusing to sell it the means of carrying on war, for in that case it is not really vanquished, and in a little while the struggle will be renewed.¹⁰¹

Admitting, however, that the present practice is objectionable on moral grounds, as well as for reasons connected with the maintenance of a policy of strict neutrality, there are several practical difficulties which stand in the way of the proposed change. The first of these is the difficulty of enforcing prohibitory trade measures. As Earl Granville in his reply to Count Bernstorff in 1870 pointed out, if the exportation of arms and munitions were prohibited by law, they would be exported clandestinely, to prevent which it would be necessary "to establish an expensive, intricate, and inquisitorial customs system, under which all suspicious packages, no matter what their assumed destination, would be opened and examined." "Moreover," he said, "it would cause infinite delay and obstruction to innocent trade." ¹⁰²

The difficulty of preventing such trade, Earl Granville went on to say, had been abundantly shown during the Crimean War. The Prussian Government had by decree forbidden the transit through Prussian territory to Russia of arms and munitions, but the customs authorities were powerless to prevent violations of the law. If the Prussian authorities could not prevent such traffic across a land frontier, it would be still more difficult for Great Britain, which has no land frontier, since a ship leaving her ports may go where she please.¹⁰³

- ¹⁰¹ These views of Von Bar are set forth in an article entitled, Observations sur la Contrebande de Guerre, published in the Revue de Droit International et de Legislation Comparée, Vol. XXVI (1894), pp. 401 ff.
 - 102 British and Foreign State Papers, Vol. 61, p. 764.
- 101 Westlake remarks (and his views apply with equal force to the United States) that if the exportation of contraband were prohibited, England would be the country in which with the best intentions and greatest activity on the part of the government, such a rule would be the worst observed, and which would suffer most from international difficulties to which the breach of it would give rise.—Collected Papers, p. 391. The Zulus, says Spaight (War Rights on Land, p. 478), who fought at Isandlewana and Rorke's Drift in 1879 were armed with rifles which had been smuggled into Zululand by English traders who knew perfectly well for what purpose the arms were to be used. Spaight also remarks that the sword-bayonets for the French Chassepôts used in the Franco-German War of 1870, though sold at Birmingham, were first imported from Germany and thus employed to kill Germans.

As Spaight aptly remarks,

If a neutral Power were held responsible for all the commercial transactions of its subjects with belligerents, most of the nations of the world would have to rewrite their constitutions whenever a war began. The outbreak of hostilities between any two states would have the effect of establishing in every country not participating in the war a system of governmental interference with private persons and their business transactions which would only have to be tried once to stand condemned as intolerable and impossible.¹⁰⁴

Geffcken and von Bar, both German writers, have condemned the proposal to prohibit the exportation of arms and munitions largely for this reason. Geffcken ¹⁰⁵ remarks that to attempt such a measure would be to impose upon neutrals impossible responsibilities. Von Bar ¹⁰⁶ says it "would not only injure incalculably the commerce of neutrals, but it would necessitate a system of surveillance and control by neutrals over the sale and transportation of merchandise which would be intolerable." ¹⁰⁷

The obligation to prohibit such traffic being once recognized, legal responsibility for failure to enforce the prohibition follows as a consequence and the neutral is exposed to liability for damages to an injured belligerent for neglect to exercise due diligence. As Lawrence observes, a nation "after having dislocated its commerce and aroused the anger of its trading classes, might possibly find itself arraigned before an international tribunal and cast in damages because a few cargoes had slipped through the cordon it maintained against its own subjects." ¹⁰⁸ "No chain of mountains and no coast line," says Lorimer, "has ever

war Rights on Land, p. 475.

¹⁰⁵ Der Handel mit Waffen und Kriegsmaterial, in Holtzendorff, Handbuch, Bd. IV, Sec. 152.

¹⁰⁶ Observations sur la Contrebande de Guerre, Revue de Droit International et de Législation Comparée, Vol. XXVI (1894), p. 401.

¹⁰⁷ The proposal to prohibit trade in contraband has also been criticised on the above mentioned grounds by Creasy, First Platform of Int. Law, p. 608; by Calvo, *Droit Int. Pub.*, Vol. V, Sec. 2774; by Davis, Elements of Int. Law, p. 403; Lawrence, Principles, p. 712 (who remarks that the effective enforcement of such a policy would require an army of spies and informers); and by many jurists at various sessions of the Institute of International Law, notably by Westlake and Lorimer at the meeting of 1875 (*Rev. de Droit Int.*, Vol. VII, pp. 605 ff.) and by General den Beer Portugael and M. Lardy in 1894 (*ibid.*, Vol. XXVI, pp. 323 ff).

¹⁰⁸ Principles of International Law, 4th ed., p. 702.

been or really could be guarded, and a state which undertakes to do it would be exposed to the accusation of having failed in its engagements." ¹⁰⁹

The practical result of such a policy would be to shift the responsibility which now rests upon belligerents themselves to intercept shipments of contraband destined for the use of the enemy, to the shoulders of the neutral who becomes liable to damages for failure to do it. Instead, therefore, of removing what is admitted to be one of the chief sources of controversy between belligerents and neutrals, it is believed that such a rule would by imposing undesirable if not impossible duties upon neutrals, greatly augment the already serious inconveniences to which they are subjected, and lay the foundations for international claims and controversies.¹¹⁰

Another practical objection to a rule of law which would prohibit merchants of neutral states from selling arms, munitions and other war materials to belligerents, and one which has often been pointed out since the beginning of the recent agitation in this country for an embargo on the exportation of such articles, is to be found in the necessity which it would impose upon states which do not maintain large and fully equipped military establishments, or which do not possess extensive industries for the manufacture of military armament, of purchasing and storing in time of peace adequate quantities of such supplies, or of establishing new industries of their own upon which they could rely in case of war. In short, "unprepared" nations would be compelled to put themselves in a war posture in time of peace, to be in readiness at all times to meet any emergency; otherwise, in the event of attack by a powerful military state, they would find themselves embarrassed by the lack of arms and munitions and by the means of producing them in sufficient quantities for the purposes of national defense. As Westlake aptly observes,

¹⁰⁹ Revue de Droit Int. etc., Vol. VII (1875), p. 609. In this connection it may be remarked that the ground upon which Great Britain remonstrated against the transit of arms through Prussian territory to Russia during the Crimean War was not that Prussia was bound to prohibit such traffic, but that having issued a decree for this purpose, she was bound to enforce it. See Earl Granville's note of September 30, 1870, to Count Bernstorff, Brit. & Foreign State Papers, Vol. 61, p. 762.

¹¹⁰ Cf. the remarks of William C. Dennis, in the Annals of the American Academy of Political and Social Science, July, 1915, p. 173.

The manifest tendency of all rules which interfere with a belligerent's power to recruit his resources in the markets of the world is to give the victory in war to the belligerent who is best prepared at the outset; therefore, to make it necessary for states to be in a constant condition of preparation for war; therefore, to make war more probable.¹¹¹

The tendency, if not the effect of such a rule would be to compel non-military nations which devote their wealth and energies to the peaceful industrial arts to divert their resources and activities to the manufacture of munitions of war and the upbuilding of military and naval armaments. Such a policy, instead of diminishing the eventualities of war would on the contrary probably multiply certain influences which promote wars, unless the manufacture of arms and munitions were made a government monopoly.¹¹²

The attacks that have recently been made upon the existing rule, so long approved by the jurists and text-writers of all countries, and so generally followed in practice by states, have, as is well known, not been made in the interest of neutrality, but in the interest of a particular belligerent. The purpose of the proposed alteration of the rule was not to maintain equality of treatment to all belligerents, but to nullify the advantage which one of them had won through its superior naval strength. Nowhere has the case against the proposed alteration of the existing rule been more cogently summarized than in Secretary Lansing's note of August 12, 1915, in reply to the Austro-Hungarian protest, where he said:

¹¹¹ Collected Papers, pp. 391–392. Cf. also the remarks of Wm. C. Dennis, Esq., in the Annals of the American Academy of Political and Social Science, July, 1915, p. 175; and a letter of Ex-President Taft of January 24, 1916, to E. von Mach, published in the press at that time.

112 Mr. Lansing, in his note of June 29, 1915, to the Austro-Hungarian Government, thus stated the practical objection to such a policy: "The general adoption by the nations of the world of the theory that neutral Powers ought to prohibit the sale of arms and ammunition to belligerents, would compel every nation to have in readiness at all times sufficient munitions of war to meet any emergency which might arise and to erect and maintain establishments for the manufacture of arms and ammunition sufficient to supply the needs of its military and naval forces throughout the progress of a war. Manifestly the application of this theory would result in every nation becoming an armed camp, ready to resist aggression, and tempted to employ force in asserting its rights rather than appeal to reason and justice for the settlement of international disputes.

The principles of international law, the practice of nations, the national safety of the United States and other nations without great military and naval establishments, the prevention of increased armies and navies, the adoption of peaceful methods for the adjustment of international differences, and, finally, neutrality itself are opposed to the prohibition by a neutral nation of the exportation of arms, ammunition, or other munitions of war to belligerent Powers, during the progress of the war.

But admitting that considerations of morality and the spirit of neutrality outweigh the inconveniences and dangers to which certain neutral states would be exposed by an abrogation of the existing rule, the question arises when and how should the rule be altered. The right of a neutral Power to prohibit at the outbreak of a war the exportation of arms and munitions from its territory is universally admitted; but may it do so during the progress of the war, after one of the belligerents by means of his superior naval strength has succeeded in commercially isolating his adversary and cutting off his access to neutral markets?

If a neutral government upon the outbreak of war announces that its markets will be open on equal terms to all belligerents, and subsequently when one belligerent has driven the naval forces of his enemy from the seas and blockaded his ports, the neutral decides to close its markets to all belligerents, would not the effect be to nullify in large degree the victory achieved by the one belligerent by depriving him of an advantage honestly won? Has he not a right to expect, as von Bar says, that the relations between the neutral and his adversary shall not be changed to his own disadvantage? The general opinion of the authorities is that such a change would not only not be consistent with the maintenance of an attitude of neutrality, but, on the contrary, it would in effect amount to giving assistance to the belligerent who in consequence of the fortunes of war has been excluded by his enemy from recourse to neutral markets. The true principle was stated by Secretary Lansing in his recent communication to the Austro-Hungarian Government. In this communication the Secretary said:

This government holding, as I believe Your Excellency is aware, and as it is constrained to hold in view of the present indisputable doctrines of accepted international law, that any change in its own laws of neutrality during the progress of a war which would affect unequally the

relations of the United States with the nations at war would be an unjustifiable departure from the principle of strict neutrality, submits that none of the circumstances urged in Your Excellency's memorandum alters the principle involved. The placing of an embargo on the trade in arms at the present time would constitute such a change and be a direct violation of the neutrality of the United States. It will, I feel assured, be clear to Your Excellency that, holding this view and considering itself in honor bound by it, it is out of the question for this government to consider such a course.¹¹³

This view is that held by the leading jurists and text-writers. To cite only one of many Westlake, adverting to Earl Granville's statement to Coun't Bernstorff in 1870 that "Her Majesty's Government would be prepared to enter into consultation with other nations as to the possibility of adopting in common a stricter rule," observed that

at least, whether or not such a consultation may follow the conclusion of the present war, it must be allowed that to change an existing rule to the prejudice of one belligerent during the war, and that in compliance with the express request of the other belligerent that our neutrality should be more favorable to him, would be a clear breach of neutrality, even although there might be the most excellent reasons for giving a general preference to the new rule on future occasions.¹¹⁴

But, it is asserted by those who argue that an alteration of the rule by a neutral during the progress of the war would constitute no violation of neutral duty, most of the neutral Powers of Europe have in fact prohibited the exportation of arms, munitions, and other commodities of war from their territories. The answer to this argument is that those embargoes, as has already been stated, were not intended as neutrality measures, but measures of conservation and defense, and there is, therefore, no analogy between them and the proposed American embargo. Moreover, as was pointed out by Senator Lodge in the course of a debate in the Senate, the effect of the European embargoes was in no case to alter the existing situation as between the several belligerents

¹¹² Professor Burgess (The European War, p. 181) pronounces this argument as "manifest sophistry" and says "if it is advanced by the neutral it is only a pretext for favoring one belligerent. It is one of the most fundamental rules of international law that indirect consequences are not to be taken into account."

¹¹⁴ Collected Papers of John Westlake, p. 378.

¹¹⁵ This argument was emphasized by Senator Hitchcock in his speech in the Senate, referred to above.

by depriving one of an advantage already gained, whereas the proposed American embargo would in fact have cut off the supply of but one belligerent and its allies without affecting the other. In the language of Senator Lodge, it would have been "worth more than a million men to Germany." ¹¹⁶

There may, of course, be special reasons affecting its own national interests, and having no relation to considerations of neutrality—as there doubtless were in the case of the neutral nations of Europe which have recently laid embargoes,—which would justify a neutral government in altering the policy 117 proclaimed by it at the beginning of the

116 See his remarks in the Senate January 5, 1915 (Cong. Rec., pp. 585–586). In the course of the debate, Senator Lodge said, "Mr. President, on the single point of neutrality, the test of neutrality is whether the action of the neutral changes the conditions created by the war. Our markets are open to all the world to buy. We have taken no action to prevent any belligerent or anyone else from buying in our markets, and we are at peace with all the world. A condition has been created by this war, and by this war alone, which prevents one or more of the belligerents from buying in this market. Now, if we undertake to reverse a condition created by the war we at once pro tanto enter into the war and endeavor to restore a condition existing before the war, and that is an act of unneutrality."

Again,—"I think, Mr. President, if this government placed an embargo now on the export of munitions of war, it would be guilty of a grossly unneutral act, because it would by so doing change a condition created by the war, and by changing a condition created by the war, that is created by one belligerent, it would make itself to that extent the ally of the other belligerent."

¹¹⁹ The Austro-Hungarian Minister of Foreign Affairs in his note of June 29, 1915, defending the proposition that an embargo on the exportation of arms and munitions during the progress of a war would not be an unneutral act, relied upon a portion of the preamble to the Hague Convention No. XIII, which reads as follows: "Seeing that, in this category of ideas, these rules should not in principle be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power."

The italicized words of this preamble, argued Baron Burian, introduced an exception to the general principle and authorized, if it did not require, in certain circumstances, an alteration of the rule embodied in Article 7 of the convention, which declares that a neutral Power is not bound to prevent the export or transit of arms and munitions of war for the use of either belligerent.

It is difficult to see how such an argument can be drawn from the preamble quoted. Clearly its purpose was to confer a discretionary power on neutrals to prohibit the export of arms during a war, for their own national protection rather than to impose upon them a duty to do so. As Mr. Lansing pointed out in his note of August 12 to the Austro-Hungarian Government, the right and duty of determining when this necessity exists rests with the neutral and not with any belligerent. If the neutral

war, even if it operated in some degree to the detriment of a particular belligerent, for a neutral state cannot be expected to forego measures for the safeguarding of its own national interests merely in order that a belligerent may continue to enjoy the advantage of recourse to its markets for the purchase of things which the neutral may need to husband for its own use.

But the precedent upon which the advocates of an American embargo have most relied in support of their contention that the rule may be changed by a neutral during the progress of the war was that set by President Wilson in 1914, in lifting the embargo which had been laid in 1912 on the exportation of arms to Mexico during the struggle between Carranza and Huerta. In an address to Congress on August 27, 1913, in regard to the Mexican situation, Mr. Wilson declared that

it was our duty to offer our active assistance. It is now our duty to show what true neutrality will do to enable the people of Mexico to set their affairs in order again and wait for a further opportunity to offer our friendly counsels. Deeming it my duty to exercise the authority conferred by the act of March 14, 1912, to see to it that neither side to the struggle now going on in Mexico receive any assistance from this side of the border, I shall follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United States to any part of the Republic of Mexico, a policy suggested by several interesting precedents and certainly dictated by many manifest considerations of practical expediency. We cannot in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them.

By a proclamation of February 3, 1914, however, the President lifted the embargo on the ground that the conditions existing at the time it was laid had been "essentially changed" and it was "desirable to place the United States with reference to the exportation of arms and munitions of war to Mexico in the same position as other Powers." If, the

does not choose to exercise the right, a belligerent cannot justly complain; and to assert such a claim would be assuming to dictate to the neutral what the belligerent regarded as necessary to the protection of the neutral's own rights. The assertion of such a claim, as Mr. Lansing remarked, would invite just rebuke from the neutral to whom it was addressed.

Compare to the same effect the views of the Editor-in-Chief of this JOURNAL, October, 1915, p. 932.

advocates of an embargo in the present war argue, it was not an unneutral act to change the rule during the course of the struggle in Mexico, it would not be unneutral to alter it during the present European conflict. It is submitted, however, that this precedent—the only one of the kind, it may be remarked, in our history—is not a happy one for the advocates of an embargo during the present war. It may be doubted in the first place whether the statement of the President in his address to Congress on August 27, 1913, that the prohibition of the exportation of arms represented the "best practice of nations in the matter of neutrality" was true. Certainly it was not in accord with the unbroken practice of Great Britain, France, Germany, and the United States.

But waiving discussion of this point, it is important to note that the effect of the change of policy through the *lifting* of the embargo in the case of Mexico was different from that which would result from the *laying* of an embargo in the present war. To change the rule by removing a prohibition is not the same thing as changing the rule by establishing a prohibition. The effect of the removal of the prohibition in the case of Mexico was to grant equality of opportunity to both parties; the effect of establishing a prohibition in the present war would be to introduce inequality of treatment by depriving one belligerent of the fruits of a victory already won. The two measures therefore do not stand on the same footing: one allows freedom of trade and is therefore the normal policy; the other prohibits it and is therefore exceptional.

Finally, the action of President Wilson is not a precedent for like action in the present war, because the situations in the two cases are not analogous. The Mexican struggle was not a war in the technical sense; neither party was ever recognized as a belligerent, and the rules of international law governing the obligations and duties of neutrals toward belligerents did not apply. Whatever may have been said by the President regarding the duty of the United States to maintain an attitude of neutrality as between Huerta and Carranza, it is well known that the imposition of the embargo in the first instance and the subsequent lifting of it were based upon other considerations than the obligations of international law in respect to the relations of belligerents and neutrals.

JAMES W. GARNER.

THE RELATIONS BETWEEN CHINA, RUSSIA AND MONGOLIA

The Russo-Mongolian Agreement of November 3, 1912, with its protocol; the Russo-Chinese Declaration of November 5, 1913, with the notes exchanged on that date; the Russo-Mongolian Railway Agreement of September 30, 1914, and the Tripartite Agreement between China, Russia, and Mongolia signed on June 7, 1915, together with the declaration of China and Russia, accompanying this last-mentioned document, are all printed in the Supplement to this number of the Journal and are deserving of more than a passing notice, for they undertake to define the relations of three great nations and recall historic events of considerable importance.

The Mongols are the same people that once swept in triumph over Asia and southeastern Europe. Their tribal rulers today, in three Khanates at least, claim to be lineal descendants of the great Genghis Khan. Urga, the capital of Outer Mongolia and the holy city of the Mongols, is built beside the sacred mountain where, tradition says, Genghis the conqueror was born.

The Hutukhtu of Urga, elected Emperor of Outer Mongolia, when its independence was declared in 1911, was previous to that time but the religious head of the nation. He is third in rank in the Lamaist hierarchy, his superiors being the Dalai Lama, the Civil Ruler of Tibet at Lhassa, and the Panshen Erdeni Lama, the Ecclesiastical Ruler of Tibet at Tashihlumpo. There are 160 hutukhtus in Tibet, Mongolia and China, each believed to be the reincarnation of his predecessor and, therefore, popularly but incorrectly styled "Living Buddhas." The Hutukhtu of Urga holds jurisdiction over some 25,000 lamas and is reputed to have 150,000 slaves caring for his estates and tending his vast herds and flocks of horses, cattle and sheep.

Mongolia, as a geographical term, denotes all that great stretch of territory lying between the organized provinces of China on the south and Siberia on the north. It covers an area of nearly 1,400,000 square miles, but has a population of no more than 2,000,000. Outer Mongolia,

with which the documents mentioned above are concerned, has a population of about 500,000 Mongols, 200,000 Chinese and some 5,000 Russians. The central portion of Mongolia is a lofty plateau about 4000 feet above sea-level and largely desert. Southern or Inner Mongolia has a fertile soil and Outer Mongolia to the north of the plateau shows great stretches of green pasture lands.

The Mongols are mostly nomads. There are very few towns in the country and the agricultural districts are settled for the most part by Chinese colonists, who are encroaching upon the pastures of the Mongols, to the great annoyance of the latter, at an average rate estimated as a mile a year along a frontier of 1500 miles.

Mongolia is divided into two great divisions, Inner Mongolia, the region lying nearest to China and comprising territories inhabited by the tribes which first acknowledged the over-lordship of the Manchus, and Outer Mongolia embracing the remainder of the country. The Inner Mongols still retain the organization into six leagues adopted by the successors of Genghis Khan when all Asia lay beneath their sway.

Outer Mongolia, whose Government is directly concerned in the tripartite agreement mentioned above, has been tributary to China since 1691 A. D., and has testified its allegiance in the past by the presentation annually to the Manchu Court of eight white horses and one white camel. The Chinese have allowed the Mongols autonomous local government but have kept oversight of affairs by a resident placed at Urga and military governors at Kobdo and Uliassutai.

The introduction of Buddhism in its lamaist form has reduced the once warlike race to a nation of monks. It is estimated that five-eighths of the male population are lamas and celibate.

The principal divisions of Outer Mongolia are the three Khanates of Tushetu, Tsetsen and Dzassaktu, the territories Sain-noin, Urianghai and Kobdo, and the regions inhabited by the Eleuths and Alashan Mongols in the southwest and by the Barga in the northeast. There appears, however, to be some doubt as to the inclusion in "Autonomous Outer Mongolia" of the Eleuths and Alashan Mongols. The northwestern boundary has been a subject of dispute between Russia and China for some years past. This is to be more exactly determined, as provided by the agreement of November 5, 1913, and the notes exchanged that

day by the two governments. Inasmuch as Article XI of the tripartite agreement, which mentions the districts included in "Autonomous Outer Mongolia," omits all reference to Urianghai, it seems not improbable that that district may become incorporated in Asiatic Russia.

The eleventh article of the tripartite agreement moreover specifically excludes from "Autonomous Outer Mongolia" the region lying east of the Great Hingan Mountains known as Kulunpei-erh (Houlon-Bouire). This is a portion of the territory belonging to the Barga Mongols mentioned above. By an agreement between China and Russia signed November 6, 1915, this region was placed under the direct control of the Peking Government which appoints a Military Lieutenant Governor to administer its affairs.

The troubles which led to the negotiation of the several agreements mentioned in the first paragraph of this paper are directly traceable to two sources, first the desire of Russia to renew the treaty of 1881 with China under which Russians in Mongolia enjoyed valuable privileges, while China on her part desired to terminate the treaty and curtail these privileges; secondly, the attempts of the Chinese Government to interfere with the autonomy of the Mongol chiefs and to introduce reforms which would lead to social and industrial progress and the strengthening of the frontier.

The treaty of 1881 between China and Russia provided for the restitution to China of the district of Kuldja in Turkestan which Russia had occupied ten years before during the Mohammedan rebellion in those regions which had furnished Yakub Beg the opportunity to establish for a brief period an independent state. Russia had occupied Kuldja to preserve peace upon her borders and had announced that the territory would be returned to China as soon as the Chinese recovered control of the rebellious dependency of Ili. General Tso, after one of the most remarkable military exploits in the history of central Asia, reconquered the disaffected region in 1878 and in 1881 China agreed in the treaty above-mentioned to pay Russia nine million roubles for the restitution of the greater part of Kuldja. The treaty, however, gave Russia in addition the right to place consuls in certain cities of Turkestan and Mongolia and later, after agreement with China, if conditions of commerce should make it desirable, to station consuls in certain other towns.

The Russians were also granted the right to trade in Mongolia, and in Turkestan, as far as the Great Wall, free of all duties, but this right was to be abrogated as soon as commercial conditions should make it necessary to establish a customs tariff. Furthermore the Russian merchants were permitted to buy ground and build for themselves houses and shops and warehouses in cities where Russian consulates should be established. In addition to these privileges, a zone was established along the frontier between China and Russia, fifty versts wide on each side of the boundary, that is to say, a zone 100 versts or $66^{2}/_{3}$ miles in width, within which all imports and exports to or from either country were to be entirely free of duty. Moreover, the imports beyond this zone into China by certain land routes were to be charged only two-thirds of the customs duties provided in the regular tariffs for sea-borne commerce, and the exports to Russia from China by these routes were to pay only the regular export duty. If the half-duty for coast trade levied on goods from other parts of China had been paid when such goods were shipped to Tientsin, the starting point for the Russian over-land trade, such half-duty was to be refunded.

These privileges, as will be recognized by all, were of considerable value to Russia. The treaty was made subject to revision or renewal at the end of ten-year periods, six-months notice being required if renewal were not to be granted. The treaty had been renewed in 1891 and 1901, and was due for renewal or revision on August 20, 1911. China was reported to be considering the advisability of giving the six-months notice required to prevent renewal of the treaty.

Russia in 1910 repeatedly called the attention of the Chinese Foreign Office to alleged infractions of the treaty by Chinese subordinate officers in the frontier districts, and the Chinese Government in its replies showed that the terms of the treaty were not interpreted in the same way by the two governments. China held that the right to appoint additional consuls to reside in Mongolia was to be exercised only when the conditions of commerce were such as to necessitate the establishment of customs by China for the collection of duty. In other words, the taxation of trade by Chinese officials, of which Russia complained as being an infraction of the treaty, was justifiable on the same grounds as the appointment by Russia of additional consuls.

The Chinese, moreover, held that the Russian right to trade in Mongolia and Turkestan meant no more than the right to sell foreign imports in these regions and to buy native goods for export, that it was not intended that Russians should sell Chinese goods in Chinese territories. This was in reply to a complaint of Russia that China had established a tea monopoly and had forbidden Russian merchants who had bought tea in China to sell such tea en route to the frontier. Russia rejoined that the establishment of any monopoly was a violation of other treaties with various foreign Powers and insisted upon a literal interpretation of Article XI of the treaty of 1881 which provides that Russians may "make purchases and sales."

No satisfactory adjustment of these difficulties having been made, the Russian Government on February 3rd presented to China a series of demands covering the points in dispute, in which after some delay, China was fain to acquiesce. August came and went, however, without any definite declaration that the treaty of 1881 had been renewed.

In the meantime affairs in Outer Mongolia began to wear a troubled appearance. In July, 1911, a number of Mongol princes and lamas held a meeting in Urga to consider the situation. Chinese colonists were crowding into Mongolia. It was complained that not only was their settlement in Mongolia in violation of the original agreement made with the Manchu Government when acknowledgment of suzerainty was made, but that it was depriving the Mongols of needed pasture lands. Moreover, the Chinese are shrewd traders and it was said that they were loaning money to Mongols at exorbitant rates of interest upon the security of their lands, that the Mongols were unable to repay, and that the Chinese thus obtained possession of much Mongol property. Complaint was made, too, of the attempts of San To, the Chinese Amban at Urga, to introduce administrative changes, interfering with Mongol autonomy, and of the military measures being taken by China.

The conference decided to send a deputation to St. Petersburg to ask for Russian protection or assistance. Russia agreed, it is said, to use her good offices with China. At any rate, in August the Russian Minister at Peking represented to the Chinese Foreign Office that the measures being taken by China were likely to affect the peace of the border. China replied, appreciating Russia's neighborliness and saying that

the reforms being introduced were for the benefit of the Mongols, but that instructions had been sent to the Resident at Urga to proceed with caution and to consult the feelings of the people. In the following month the revolution broke out in the province of Szechuen and matters in Mongolia were put aside by the Peking Government.

To the Mongols, however, the revolution came as a golden opportunity. In the Tenth Moon (November-December) of that year a second conference of Mongol princes was held, and Outer Mongolia formally declared its independence of China. The Hutukhtu of Urga was chosen Emperor and crowned with great ceremony on December 28th.

On the 12th of February following the Manchu Emperor abdicated and Yuan Shih-kai was commissioned to establish a republic. A month later he was inaugurated Provisional President of the Republic of China. Conversations between Russia and China were resumed, and on April 26th the Russian Minister for Foreign Affairs explained to the Duma Russia's desire and purpose in these negotiations, which was declared to be not the annexation of any portion of Mongolia, but simply in the interest of peace and good order to mediate between China and Mongolia and thus protect the autonomy of Mongolia and the commercial interests of Russia.

Discussion between Russia and China of a revision of the treaty of 1881 still went on without definite result. China was disposed to abolish the free trade zone along the frontier. Finally on September 17, 1912, Russia announced that China having failed to give the notice required for a termination of the treaty, Russia was compelled to regard it as still in force, but that in order to meet China's wishes as expressed in August 1911, the zone of free trade on the Russian side of the frontier would be abolished from January 1, 1913. China, however, did not respond at once. It was not until May 6, 1914, that a notice was issued by the Maritime Customs authorities that the free trade zone on the Chinese side of the frontier would be abolished from June 1st of that year.

Mongolia's declaration of independence had found no recognition abroad, but in Tibet, like Mongolia, a dependency of China and strugg'ing to free itself from that bond, the coveted recognition was found. Dordjieff, a Buriat and a lama, but a subject of Russia, visited Urga in July, 1912, as the accredited representative of the Dalai Lama at Lhassa and represented to the Hutukhtu that as Tibet and Mongolia were both Buddhist countries it would be advisable to enter into a convention for mutual support against the aggressions of China. This was done, and on December 24, 1912, a treaty between the two Powers was signed in which each recognized the other as an independent state and agreed to take measures for the protection of the Buddhist faith and for mutual defence against all dangers internal or external.

In the meantime the situation at Urga began to occupy more and more the attention of Russia and China. On November 3, 1912, the agreement between Russia and Mongolia was signed in which Russia pledges her assistance to maintain Mongolia's autonomy and her right to have her own army and to admit neither the presence of Chinese troops on her soil nor the colonization of her lands by Chinese. In return for this Mongolia grants to Russian subjects the possession of certain rights and privileges, enumerated in the protocol attached to the treaty, among which are the right of free trade, of leasing and owning real property, of engaging in mining, fishing and lumbering, establishing postal facilities, and navigating streams that flow into Russian territory. It is further provided that should any treaty be made subsequently with China, these rights shall not be infringed.

President Yuan during 1912 made strenuous efforts to induce the Hutukhtu to rescind his declaration of independence. Many telegrams were sent to Urga, but brought no response until November 21, 1912, that is, some days after the above-mentioned agreement had been signed. On November 21st the Premier of Mongolia sent a telegram to President Yuan, saying that because of the ill-treatment which Mongolia had received at the hands of the Manchu rulers of China, they had declared their independence and, on December 28, 1911, had crowned the Hutukhtu as their ruler; that subsequently they had learned of the abdication of the Manchus and the establishment of self-government of the Chinese people and were greatly rejoiced. They felt, however, that as the customs of Chinese and Mongols were so diverse and the Mongols were so ignorant, it was better they should not try to live together in the same house.

A few days later, November 25th, a similar telegram from the Hutukhtu himself was received by the President. President Yuan had reminded the Mongolian ruler that his country was weak and that the course she was taking would be likely to end for her in a fate similar to that of Korea and Formosa. He replied that he realized the weakness of Mongolia, but that China was a long way off and her whip, however long, could scarcely reach to Outer Mongolia to drive off Mongolia's enemies. He begs the President not to take a severe course lest he drive the Mongols to desperate measures.

The President replied in a conciliatory telegram, calling attention to the fact that many of the Chinese provinces had in 1911 declared their independence, but that all had reunited and were working together, and that it was the aim of the Republic to unite the five races, destroy all racial prejudice and seek to promote the welfare of each and all. He informed the Hutukhtu that he was sending a special envoy to Urga to discuss matters with him.

The Hutukhtu replied promptly on November 26th that it would be better not to send an envoy, but to use the mediation of their common neighbor—Russia. Having failed in his efforts to deal directly with the Government of Outer Mongolia, President Yuan on March 8, 1913, turned once more to Russia.

The writer was in Peking in 1911, 1912, and 1913, and had opportunity therefore to note the keen interest in this question taken by the Chinese people. Their feeling against Mongolia and Russia grew very bitter during 1913. The Chinese newspapers were particularly active in trying to arouse a warlike sentiment. The situation indeed in Inner Mongolia near the Chinese border became quite serious. Additional troops were sent there by the Chinese Government and a number of encounters with bands of armed Mongols occurred but without any noticeable advantage to either side.

This feeling of hostility towards Russia was no doubt due in great measure to a misunderstanding of terms. The word "autonomy" was taken to mean "independence." When, therefore, on November 5, 1913, a little more than a year after the signing of the Russo-Mongolian Convention, an agreement between China and Russia was signed, in the first article of which Russia acknowledges the suzerainty of China

over Outer Mongolia, this feeling was very much allayed. Russia had never denied China's suzerainty over Mongolia, but this express acknowledgment of it at once silenced the false report that Russia had asked China to recognize the independence of Outer Mongolia.

China on her part acknowledged the autonomy of Outer Mongolia. This, too, was no more than a recognition of the status quo ante, but it served to reassure the Mongols, since it guaranteed that there would be no interference by China with the internal administration of the country and pledged China not to send troops into Outer Mongolia and not to colonize there. The Mongols, however, were somewhat disappointed by this agreement, since they, too, had been under the impression that their "autonomy" meant "independence."

Russia could not but be gratified, since the convention expressly agrees to the principles set forth in the Russo-Mongolian Agreement of 1912 and assents to all the stipulations regarding Russian commercial privileges contained in the protocol to that agreement.

The notes accompanying this agreement bind both Russia and China to hold a conference, in which Outer Mongolia shall participate, for the settlement of questions of a political and territorial nature.

Before that conference was held, Russia entered into another agreement with Mongolia, dated September 30, 1914, which practically gave to the former control of the railway policy of the latter. This was a matter of considerable importance to Russia, since it still further safe-guarded her frontier. By this agreement Russia obtained the right to advise Outer Mongolia in deciding what railway lines to build and the method of procedure, which was required to be beneficial to both parties. Since the gauge of the Russian railways is different from that adopted in China, this practically assures the building of lines that can connect with Russian rather than Chinese railways. Russia recognizes Mongolia's right to build the railways within its own boundaries if the funds can be raised there, but Mongolia is pledged to consult Russia before making concessions for railway construction to other nationals.

Russia having thus come into agreement separately with China and with Mongolia, representatives of the three Powers met in conference and entered into the tripartite agreement of June 7, 1915, which is the

keystone to the whole arrangement. In it Outer Mongolia is made to recognize the Sino-Russian Convention of 1913, which establishes China's suzerainty over Outer Mongolia, and expressly agrees not to negotiate treaties with foreign Powers respecting political and territorial matters, although treaties respecting commercial and industrial matters are permissible. Both China and Russia agree to abstain from all interference with the internal administration of Outer Mongolia. Chinese imports into Outer Mongolia are to be free of all duties, and goods of foreign origin are to be imported into China from Outer Mongolia on payment of the reduced tariff provided in the treaty of 1881. Thus Russia's right to free trade in Outer Mongolia is confirmed, the customs stations being removed from the Siberian frontier to that between China and Outer Mongolia.

Chinese jurisdiction over Chinese residents of Outer Mongolia is retained, but Chinese-Mongol mixed cases are to be adjudicated by Chinese and Mongol authorities acting conjointly. In Russo-Chinese mixed cases the Russian authorities take part in deciding and in drafting the judgment, even in actions heard in the Chinese court and in which a Chinese is defendant. The Chinese authorities also have the right to be present in Russian courts when Chinese are plaintiffs and Russians are defendants, but do not appear to be allowed to participate in the judgment.

The Ruler of "Autonomous Outer Mongolia" is confirmed in his title by Article IV, which provides that the President of China shall confer such title upon the Hutukhtu.

All the provisions of the several agreements between Russia and Mongolia and between Russia and China are ratified by Article XXI of the tripartite convention, and thus become incorporated in the tripartite convention.

One of the most significant articles is the third, the second paragraph of which binds China, in accordance with Article II of the notes exchanged between China and Russia on November 5, 1913, to consult Russia and Outer Mongolia in regard to all questions of a political or territorial nature. Thus, while China nominally is acknowledged as suzerain, practically Outer Mongolia is under the joint protection of Russia and China.

THE CASE OF THE APPAM

On July 29, 1916, the United States District Court for the Eastern District of Virginia entered a decree to restore to the British claimants the steamer Appam, formerly an English merchant vessel, captured by the German cruiser Moewe upon the high seas and sent into Newport News to be laid up pending the war between Great Britain and Germany. In a very elaborate opinion, the court held that the Appam had no right under international law or the treaty with Prussia of May 1, 1828, to use an American port as an asylum; that it did not have a right under the circumstances to enter an American port at all; that by so doing it violated the neutrality of the United States, and was therefore, with the proceeds of the cargo, to be restored, according to the American practice, to the British owners at the date of capture. The case is a very interesting one from the standpoint of international law, and by reason of its importance, it is to be appealed to the Supreme Court of the United States in order that, as far as the United States is concerned, a definite decision may be reached upon the points of law involved. The facts of the case and the reasoning of the District Court will, however, be set forth at this time and in this place.

Judge Waddill tells us that the facts were not disputed, and from his statement of them it appears that on January 15, 1916, the British steamship Appam was captured by the German cruiser Moewe in latitude 33.19 N. longitude 14.24 W. It also appears that "at the time of capture, the Appam was approximately distant 1,590 miles from Emden, the nearest German port, and from the nearest available port, namely, Punchello, in the Madeiras, 130 miles; from Liverpool, 1,450 miles, and from Hampton Roads, 3,051 miles."

One Berg, a lieutenant in the German Navy, was placed on board the *Appam* as prize master, with instructions from his superior officer of the capturing vessel, the *Moewe*, to "take her to the nearest American port and there to lay her up." This he did. The *Appam* under his charge arrived at Newport News, Virginia, on February 1, 1916, and Lieutenant Berg duly notified the collector of the port of his arrival.

The German Government claimed that the *Appam* was a prize; that under Article 19 of the treaty of 1799 between Prussia and the United States, carried over into the treaty of 1828 by Article 12 thereof, the vessel might remain as long as it pleased in American waters, and the German Government finally requested that the vessel be treated as a German public ship and interned during the duration of the war between Great Britain and Germany.

The British Government, on the contrary, maintained that if the *Appam* were to be treated as a prize, it did not have the right under the treaty between Prussia and the United States, nor under international law, to make of the United States an asylum, and that she should be restored to her owners and the prize crew interned.

Before the Department of State had determined the status of the Appam, and its right to enter and remain in American ports either under the Prussian treaty or the general principles of international law, the British and African Steam Navigation Company, Ltd., the English owners of the Appam at the time of its capture, libelled it in the United States District Court for the Eastern District of Virginia in order to recover possession of the vessel and its cargo. The court assumed jurisdiction of the libel. The case was carefully argued by counsel for the British owners and the German Government, and on July 29, 1916, the court decided that

The manner of bringing the Appam into the waters of the United States, as well as her presence in those waters, constitutes a violation of the neutrality of the United States; that she came in without bidding or permission; that she is here in violation of law; that she is unable to leave for lack of a crew, which she cannot provide or augment without further violation of neutrality; that in her present condition, she is without lawful right to be and remain in these waters; that she, as between her captors and owners, to all practical intents and purposes, must be treated as abandoned, and stranded upon our shores; and that her owners are entitled to restitution of their property, which this court should award, irrespective of the prize court proceedings of the court of the Imperial Government of the German Empire; and it will be so ordered.

Let us consider the first question as to the right of the Appam, either under the treaty with Prussia or general international law, to enter an

American port and to use it as an asylum during the continuance of the war.

Great stress was laid by the German Government upon the fact that the captor of the Appam had the right to send it into American jurisdiction under the treaty with Prussia. In the note of the German Ambassador to the Secretary of State, dated February 2, 1916, it is said that: "the commanding officer intends, in accordance with Article XIX of the Prussian-American treaty of September 10, 1785, to stay in an American port until further notice." In the same note he states that "the Appam has not been converted into a hostile cruiser, is not armed, and has made no prize under Mr. Berg's command." The claim is thus two-fold: first, that the Appam had not been converted into a hostile cruiser, and was a prize, and secondly that it was, therefore, to be treated as a prize, possessing the right of asylum under the treaty between the two countries.

On the 8th of February, the German Embassy delivered to the Department of State the following telegram from the German Government concerning the *Appam* case:

Appam is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Article 19 of Prusso-American treaty of 1799. Article 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war according to Article 28. The abovementioned Article 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English.¹

This telegram is quoted as a short and clear statement of the German contention.

The views of the British Government were, as might be expected, radically opposed to those of Germany. In a memorandum to the State Department, dated February 4, 1916, the British Government denied that the *Appam* had a right of asylum under the Prusso-American treaty, under the Hague Convention concerning the rights and duties

¹ Official text of diplomatic correspondence printed in Special Supplement to this Journal for October, 1916.

of neutral Powers in naval war (No. 13), under British treatment of prizes during the Civil War which met with the approval of the United States, or under the practice of the United States; and the British Government formally requested the United States to restore the *Appam* to its owners and to intern the crew if the *Appam* was to be considered as a prize.

In view of the conflicting contentions of Germany and Great Britain. and of the importance of the case to the United States, the Department of State formulated its own views on the principles involved, and they were stated clearly and forcibly by Secretary of State Lansing in his note to the German Ambassador, dated March 2, 1916, and in a second note dated April 7. Mr. Lansing held that the Prussian treaty did not give a right to the captured vessel to enter a port of the United States, but to the capturing vessel to be accompanied by its prize, and that as the capturing vessel, the *Moewe*, did not accompany the prize, the case of the Appam was not covered by the treaty. The Secretary of State called attention to the fact that the treaty contemplated a limited sojourn, evidenced by the fact that the capturing vessel was to be allowed to take out the prize "to the places expressed in their commissions;" that in the present case, Lieutenant Berg was not directed to take the vessel to a port of his country, but to the nearest American port, there to lay her up; that this was a claim, not to use an American port as a port of call, but as an asylum during the course of war. The Secretary of State therefore rejected the contention that the Appam fell within the terms of the treaty, and stated that it could only enjoy "those privileges usually granted by maritime nations, including Germany, to prizes of war, namely, to enter neutral ports only in case of stress of weather, want of fuel and provisions, or necessity of repairs, but to leave as soon as the cause of their entry has been removed." In regard to a contention of the German Government that a prize might be sequestered in a neutral port, pending prize proceedings in a port of the captor, Secretary Lansing said:

Your Excellency's Government further contends that Article 19, besides being applicable to modern conditions, is not contrary to the general rules of international law, and therefore not subject to a restricting interpretation, and in support of this cites as declaratory of

the general rules of international law Article 23 of Hague Convention XIII. As indicated by the Imperial Government, the United States did not in the case of this convention, and never has, assented to the sequestration of prizes in its ports. The ground of this position of the United States is that it does not, in the opinion of this Government, comport with the obligations of a neutral Power to allow its ports to be used either as a place of indefinite refuge for belligerent prizes or as a place for their sequestration during the proceedings of prize courts. The contention of the Government of the United States in its note of March 2 in this case is consistent with this long-established and wellknown policy of the American Government, in the light of which the treaty of 1799 was negotiated and has been enforced and applied. Provided the vessel enters an American port accompanied by a German naval vessel, Article 19 contemplates in the view of this government merely temporary sojourn of the prize in an American port and not its sequestration there pending the decision of a prize court.2

In view of the conflicting claims of Germany and Great Britain, and of the importance to the United States of the questions involved in the *Appam* case, it is advisable to consider somewhat in detail the points raised in the diplomatic correspondence of the three governments and to state the holding of the court upon them.

In the first place, it will be noted that the three governments regard the treaty between Prussia and the United States as in some way affecting the status and the rights of the Appam in American waters. The treaty in question was the treaty of May 1, 1828, between Prussia and the United States, Article 12 of which revives certain articles of the treaty of July 11, 1799, between the two countries, which was then no longer in effect. Article 19 of the treaty of 1799 was, with the exception of the last sentence, relating to treaties with Great Britain, one of the articles revived by Article 12 of the treaty of 1828, and (with the insertion of the original French in certain places, and the omission of the excepted sentence) reads as follows:

The vessels of war, public and private, of both parties, shall carry (conduire) freely, wheresoever they please, the vessels and effects taken (pris) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (prises) be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but

² Special Supplement, to this JOURNAL for October, 1916.

may freely be carried (conduites) out again at any time by their captors (le vaisseau preneur) to the places expressed in their commissions, which the commanding officer of such vessel (le dit vaisseau) shall be obliged to shew.³

The Department of State held, and its contention was supported by the court, that a proper construction of this article would not allow prizes as such to enter American ports, but would permit vessels of war, public and private, which had captured a vessel of the enemy, to bring it into an American port; that the prize only had the right to enter the jurisdiction of the contracting countries when it was conducted by the capturing vessel; and that the privilege was a privilege to the vessels of war, public and private, of both parties, to enter American ports accompanied by their prizes if any they had; that the enjoyment of the hospitality of the port by the prize depended upon the presence of the capturing vessel; that the permission to leave an American port was a permission to the capturing vessel, not to the prize; and that the clearance should be "to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to show."

Now, the reason for the grant of the right to the capturing vessel, and not to the prize, is clear, for neutrals did not wish to have their ports made an asylum for prizes which might run in and out at their pleasure. They were willing to admit the prize if accompanied by the captor, because the captor was in a position to supervise the actions of the prize and to prevent it from abusing the hospitality of the port. The presence of the captor was therefore an advantage and was deemed essential to the enjoyment of the right. But there is not a word in the treaty which expressly or impliedly grants the right to deposit, as the Secretary of State aptly said, "the spoils of war in an American port." The treaty plainly contemplated, as the Secretary of State also said, "temporary asylum for vessels of war accompanying prizes while en route to the places named in the commander's commission," indicating that the vessel with its prize might stop on its way to a port of the captor, but not that it should stop altogether in American jurisdiction.

A survey of the actions of "Citizen" Genêt during the early years of Malloy's Treaties, Vol. 2, p. 1492.

the French Revolution, when he happened to be the minister of France to the United States, should be proof in itself that the young republic was unwilling to have its ports encumbered with prizes and that it would not knowingly conclude a treaty, after its experience with France, which would allow a foreign country to dump at its pleasure the spoils of war in American ports.

Article 19 of the Prussian treaty was similar to, if not identical with, provisions dealing with the same subject in treaties which the United States had concluded with other Powers, and they were based upon the treaty of commerce and alliance of February 6, 1778, between France and the United States. In a letter dated August 28, 1801, from President Jefferson to Albert Gallatin, then Secretary of the Treasury, Mr. Jefferson, who as Secretary of State had been called upon to interpret this very provision, said:

Judge Waddill decided in favor of the contention of the United States, saying:

A careful review of the provisions of the Prussian treaty, when read in the light of the rulings and interpretation placed upon other contemporaneous treaties, especially Article XVII of the treaty of Amity and Commerce with France in 1778, convinces the court that the Secretary of State's ruling is correct, and that under the same, prizes can not be brought into the waters of the United States for the purpose of laying up by a prize master, but can only be brought in by the capturing vessel herself, or a war vessel acting as convoy to such prize, and then not for an indefinite period, but for the temporary causes recognized by international law.

In the German and British notes, various articles of the Convention Concerning the Rights and Duties of Neutral Powers in Naval Warfare, adopted by the Second Hague Conference, were referred to, sometimes

⁴ Moore, International Law Digest, Vol. VII, p. 935.

as not in force and at other times as declaratory of international law. It seems therefore advisable to consider this convention.

In the first place, it was stated by Germany that Great Britain was not a party to the convention, and that therefore according to the express wording of Article 28 thereof, the convention was not in effect, as all of the belligerents were not parties to it. Great Britain did not claim to be a contracting party, but stated that Article 21, concerning the admission of a prize, was declaratory of international law; and Germany, while rejecting the article unfavorable to its views, insisted that Article 23, permitting the sequestration of a prize in a neutral port pending a decision of a prize court, was declaratory of international law and therefore binding upon the United States. Secretary Lansing did not discuss the nature and effect of the convention except to mention that Article 23 concerning sequestration had been specifically excluded by the United States in ratifying the convention.

It is true, as stated by Germany, that by Article 28 the provisions of the convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the convention. It may be that the United States would not be obliged to apply the convention in case that all the belligerents were not contracting parties, if the articles in question introduced provisions hitherto unknown to international law. But if the provisions in question are declaratory of international law, then they bind the relations of neutrals and belligerents, irrespective of the language of the convention. In any event, it is difficult to see how the failure of one of the belligerents to be a contracting party can affect the rights and duties of the United States as a neutral Power. It is admitted that a nation can, in the absence of an international agreement regulating these matters, admit or refuse to admit prizes, and may determine the conditions upon which they are admitted or allowed to stay in its ports. The United States therefore could determine these matters for itself. It adhered to the convention on December 3, 1909, and deposited the act of adherence at The Hague in accordance with the requirements of the convention. The convention therefore can be considered, as far as the United States is concerned, as a declaration of its attitude in the matter of prizes, although other Powers may not under Article 28 claim the benefits of the convention.

The convention is, by virtue of the advice and consent of the Senate, the ratification thereof by the President, and the deposit of the act of adherence at The Hague, a statute of the United States, whether it is or is not, according to Article 28 of the convention, an international treaty. However, it is not necessary to argue this point, as the provisions of the convention relating to prizes are either declaratory of international law, or are in accordance with the practice of the United States, with the exception of Article 23, which our Government excluded expressly in its acceptance of the convention.

Articles 21, 22, and 23 of this convention, dealing with the admission of prizes, are as follows:

Article 21. A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22. A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

Article 23. A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on

board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.5

It is the custom of international conferences to appoint a reporter to prepare what may be considered an official commentary upon the text adopted by the conference, stating the origin and nature, and the sense in which the articles of the convention are understood. Professor Louis Renault prepared the report upon this convention, and the commentary besides being official, has the added value of being the work of the most

⁶ Supplement to this Journal, Vol. 2 (1908), at pp. 210-211; The Hague Conventions and Declarations of 1899 and 1907, Carnegie Endowment, 1915, pp. 213-214.

distinguished of living international lawyers. Speaking of the admission of prizes, Mr. Renault says in the report:

There are different practices with regard to the admittance of prizes into neutral ports. In some countries they are excluded, and in others they may enter on certain conditions. In the committee some contended for a prohibition against entry of prizes, while others simply classed them with war-ships. The former view prevailed. The rule therefore is that in principle the prize can not be brought into a neutral port; this includes both the case of a prize that is escorted and that of prize manned by a crew placed on board by the captor. The exceptions include unseaworthiness, stress of weather, want of provisions or of fuel.

As soon as the circumstances which justify its entry are at an end, the prize must leave. A notification is addressed to it if it does not leave of itself, and if it fails to obey, the neutral Power must take measures.⁶

In his comment upon Article 22, Mr. Renault said:

The preceding article deals with the case of a prize which has entered regularly but which does not leave when it should do so. It is also necessary to provide for the case where a prize has been brought in irregularly, that is to say, outside of the exceptions provided.⁷

In his comment on Article 23, the same distinguished authority said:

There is no question of imposing an obligation upon neutral states, as they are always free to admit or exclude prizes. The article has for its single purpose to enable a neutral to receive and guard a prize without compromising its neutrality.⁸

In adhering to the convention, the United States accepted Articles 21 and 22, but specifically excluded Article 23. In so doing it declared its attitude, and the deposit of the instrument of adherence at The Hague in accordance with the terms of the treaty was notice to the world of its attitude in the matter of prize.

The question of conflict between the Prussian treaty of 1828 and Convention No. 13 of 1907, does not arise, because the *Appam* was not brought into an American port by the capturing vessel, and therefore it derived no rights from the treaty of 1828 permitting the admission of a prize if it be accompanied by the capturing vessel. Nor was

Reports of the Hague Conferences, Carnegie Endowment, 1916, p. 863.

¹ Ibid.

⁸ Ibid., p. 864.

the Appam entitled to the permission granted by Article 21 of Convention No. 13, conditioned upon "unseaworthiness, stress of weather, or want of fuel or provisions," for it is stated by Judge Waddill in his opinion that the evidence showed "that the Appam was in first class order, quite seaworthy, and with plenty of provisions both when captured, and at the time of her arrival in Hampton Roads." If, then, Article 21 be taken as expressing the attitude of the American Government, and if the Prussian treaty does not apply to the case of the Appam, that vessel not having entered a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions, was, in the language of the law, a trespasser, and as such had no rights in American jurisdiction. And if Article 22 is to be regarded as expressing the attitude of the United States, it was the duty of the United States to release the Appam as "a prize brought into one of its ports under circumstances other than those referred to in Article 21."

But Article 23 must be referred to, as the German Government claims this article as declaratory of international law. The answer to that is the exclusion of Article 23 from the act of adherence, which, in so far as this article is concerned, reads: "That the United States adheres to the said Convention, subject to the reservation and exclusion of its Article 23." This action on the part of the United States was due to the recommendation of the American delegation to the Conference, which said, in its official report to the Secretary of State:

Articles 21 and 22 seem to be unobjectional. Article 23 authorizes the neutral to permit prizes to enter its ports and to remain there pending action on their cases by the proper prize courts. This is objectionable for the reason that it involves a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port. This article represents the revival of an ancient abuse, and should not be approved. In this connection, it is proper to note that a proposition absolutely forbidding the destruction of a neutral prize, which was vigorously supported by England and the United States, failed of adoption. Had the proposition been adopted, there would have been some reason for authorizing such an asylum to be afforded in the case of neutral prizes. ¹⁰

⁹ Hague Conventions and Declarations, Carnegie Endowment, p. 219.

¹⁰ Instructions to the American Delegates to the Hague Peace Conferences and their Official Reports, Carnegie Endowment, 1916, p. 127.

The action of the Senate in rejecting Article 23 was based upon the recommendation of the American delegation, and the express exclusion of the article was notice of the fact that neutral prizes could not enter and lie in an American port pending the action of a prize court in the country of the captor. Indeed, the exclusion was intended to prevent the very trouble foreseen in the report of the American delegation and provided against in the exclusion of the article, because "it involves a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port." The Appan was 130 miles from the Madeiras, but the neutrality of Portugal was questionable, and the prize might not be safe in its waters. Emden, the nearest German port, was 1,590 miles away, but the British command of the sea made it dangerous if not impossible for the Appam to attempt to reach a German port in the neighborhood of the British fleet. Hampton Roads was 3,051 miles from the place of capture. The journey to this port was thought to be free, as the event proved, from British cruisers, and the Appam therefore speeded across the Atlantic to an American port to escape the consequences of British command of the seas. The commander of the Appan was directed to take the ship "to the nearest American port and there to lay her up," in the apt words of Secretary Lansing, "as the deposit of the spoils of war in an American port." Judge Waddill's opinion on this point is as follows:

The Hague Convention (XIII) was signed at The Hague on the 13th of October, 1907, and was ratified by the Senate of the United States in executive session on the 17th of April, 1908. That body, however, excepted and excluded Article 23 (36 Stat. L. part 2, p. 2438). The law, as shown in Dana's note (1866) to Wheaton's International Law, 8th American Edition, sec. 391, is as follows:

"The modern practice of neutrals prohibits the use of their ports by

"The modern practice of neutrals prohibits the use of their ports by the prize of a belligerent, except in cases of necessity; and they may remain in the ports only for a meeting of the exigency. The necessity must be one arising from perils of the seas, or need of repairs, for seaworth-

iness, or provisions and supplies."

The British Government, at the beginning of the civil war, in the United States, took this position, and so instructed the British admiralty. Subsequently, like position was taken by other prominent Powers, and the same view has been taken generally from time to time by different nations down to our war with Spain in 1898, and to the present time. It was said by Attorney General Wirt:

"It would be a breach of neutrality to permit a port to be made a cruising station for a belligerent, or a depot for his spoils and prisoners. It is not a breach of neutrality to permit a vessel captured as prize to be repaired in our ports, and put in a condition to be taken to the port of the captor for adjudication. (2 Op. Atty. Gen. 86.)"

Mr. Seward, Secretary of State, replying to the Peruvian Legation as to the position of the United States respecting the war between Spain

and Peru, said:

"This Government will observe the neutrality which is enjoined by its own municipal law and by the law of nations. No armed vessel of either party will be allowed to bring their prizes into the ports of the United States. (Moore's Digest, Sec. 1302, p. 738.)"
In the Flad Oyen case (1 C. Rob. 135), Lord Stowell, considering the

"It gives one belligerent the unfair advantage of a new station of war which does not properly belong to him, and it gives to the other the unfair advantage of an active enemy in a quarter where no enemy would naturally be found. The coasts of Norway could no longer be approached by the British merchant with safety, and a suspension of commerce would soon be followed by a suspension of amity.

"Wisely, therefore, did the American Government defeat a similar attempt made on them, at an earlier period of the war; they knew that to permit such an exercise of the rights of war within their cities, would

be to make their coasts a station of hostility."

Reference may also be had to Hall's International Law, 5th edition, p. 618, and "Laws of War," Risley, p. 176; Bluntschli on International Law, sec. 778, Int. Law, Note.

The right of belligerents to use neutral waters, as an asylum for prizes,

can no longer be successfully contended for.

Admitting that the Appam did not have the right to use the United States as an asylum, either under the Prussian treaty or general international law, the question arises as to the duty of the United States in the premises and as to the jurisdiction of the court in such a case, because the libel was filed by the original British owners on February 15, 1916, before the Department of State had completed its investigation of the case and before it had decided and communicated its decision to the German Government. According to the American theory, jurisdiction assumed by the court ousts the jurisdiction of the Department of State and the executive takes no action during the pendency of judicial decisions.

There can be no doubt that the District Court of the United States sits as a court of prize without being specially constituted, as was laid down by Chief Justice Jay in the case of the *Betsy* (3 Dallas, 6), decided in 1794. And there is no doubt that a prize court having jurisdiction can order restitution of property unlawfully in the possession of captors in the country in which the court is situated, and that the court may order restitution of property brought within its jurisdiction and in the possession of a captor of any nation if the neutrality of the United States has been violated in the capture.

The case, however, in the present instance seems to be different, as there was no violation of American neutrality or American rights upon the high seas by the capture of the Appam. The violation of neutrality, if it took place at all, took place within the United States, either by the prize entering an American port unlawfully, or after having entered lawfully, by prolonging its stay contrary to international law. Citing and relying upon the case of the Betsy, the court had no difficulty in assuming jurisdiction in the case of the Appam, and the court relied upon the Santissima Trinidad (7 Wheaton, 283), decided in 1822, for jurisdiction in the case of a violation of American neutrality taking place within its jurisdiction. But neither of these cases, dealing as they did with the violation of neutrality within American waters by the augmentation of crews, armament, etc., quite covers the present case. The judge, however, based his action upon two other cases. One of these was the Adventure (8 Cranch, 221), decided by the Supreme Court in 1814, in which the court assumed jurisdiction and delivered to its original British owners the vessel, which, captured by the French, had been given to Americans (whose vessels had been burned by the French), and brought into Norfolk by the American donees. The question, however, was not merely the assumption of jurisdiction, but was the assumption of jurisdiction due to an unneutral act of the prize crew which would justify and require in law the restitution of the prize to the original The other was the Queen v. The Chesapeake (1 Oldright's Nova Scotia Reports, 769). The case and the principle of law involved in it are thus stated by Judge Waddill:

The Queen v. The Chesapeake, 1 Oldright's Nova Scotia Reports, 769, was the case of an American vessel sailing from New York, captured by certain persons bearing a commission from the Confederate States Government, shipped thereon as passengers. After sailing from

New York, they overpowered the captain and crew, and took the vessel into a Canadian port. Suit was instituted in the name of the Crown for forfeiture of the vessel for violation of the British neutrality. Claim was made on behalf of the private owners, and restitution was ordered, on payment of costs and expenses. (Moore's Digest, International Law, Vol. II, p. 366, Vol. 7, p. 937.) In the course of his opinion deciding the question, the judge of the vice-admiralty court said:

"By the affidavits upon which I granted a warrant it is certain that the Chesapeake, if a prize at all, is an uncondemned prize. For a belligerent to bring an uncondemned prize into a neutral port to avoid recapture is an offense so grave against a neutral state that it ipso facto subjects that prize to forfeiture. For a neutral state to afford such protection would be an act justly offensive to the other belligerent state."

At the prior hearing of the case, the court also said:

"I am of opinion that no use of a neutral territory for the purposes of war is to be permitted. I do not say remote uses, such as procuring provisions and refreshments and acts of that nature which the law of nations universally tolerates, but that no proximate acts of war are in any way whatever to be allowed to originate on neutral grounds."

On the authority of adjudged cases, principally those of the *Betsy*, the *Santissima Trinidad*, the *Adventure*, and the *Chesapeake*, Judge Waddill considers himself justified in thus concluding the part of the judgment devoted to the question of jurisdiction:

This power on the part of the courts of the United States may not be given specifically by any statute, as required for the exercise of criminal jurisdiction, but arises from the authority reposed in them under the constitution as courts of admiralty and common law, charged with the duty of administering the law of nations.

Admitting the correctness of the judgment in the case of the Chesapeake and the violation of neutrality by bringing an uncondemned vessel into a neutral port in order to escape recapture, the question arises whether the Appam is in this condition. It is true that it was brought to American waters by its captor with an order "there to lay her up," and that the prize master, supported by his government, claimed the right "to stay in an American port until further notice," the notice in this case being apparently to be given by the prize master, not by the Government of the United States.

So far the case of the *Chesapeake* would seem to be a precedent. But, admitting that the *Appam* came into American jurisdiction to avoid recapture, and that the vessel both claimed and sought to exercise the right of asylum in American waters, it did not come as a mere trespasser, but apparently in the belief that it had the right to enter an American port and there to remain as long as it pleased, under authority of the treaty of May 1, 1828, between Prussia and the United States, which both governments admit applies to Germany, and by virtue of which the German Government claimed "that the vessels and effects taken from' the enemies of the contracting parties may be carried freely wheresoever they please, and that such prizes shall not be 'put under legal process when they come to and enter the ports of the other party. * * * *'" 11

The contention of the German Government was, as already stated, that the prize itself, under charge of a prize master, might avail itself of the provisions of the Prussian treaty, whereas the contention of the United States was, confirmed by the court, that a German prize could only avail itself of the privilege of entering, remaining in our jurisdiction, and leaving it, if it were brought into the port by the capturing vessel and if it left the port under charge of the capturing vessel. The interpretation of the treaty might well be considered as open to doubt, and a vessel coming into American jurisdiction under claim of a treaty right, which it cited as an express authority for entrance, can not well be considered as a trespasser in the sense of the Chesapeake, which had no claim of right. If the Department of State had accepted the German interpretation of the treaty, the Appan would not have been a trespasser, and in this case it would not have violated neutrality as interpreted by the United States. Until the United States decided the question adversely to the vessel, it would seem that the Appan was not a trespasser, and that it could not be considered to have violated American jurisdiction. It certainly was admitted, because it was not excluded; and it certainly was allowed to remain in the United States pending investigation of the question, for neither the commander nor the German Government had been given notice for the vessel to depart.

¹¹ Note of the German Ambassador to the Secretary of State, February 22, 1916, Special Supplement to this JOURNAL for October, 1916.

This seems to have been the view of Secretary Lansing, who said, in his note of April 4, 1916, to the British Ambassador:

I have received your formal note of the 31st ultimo, in which you request that as the *Appam* had violated the neutrality of the United States by her staying in port up to the beginning of the suit now pending against her, such violation of American neutrality be called to the court's attention by the proper representatives of the Department of Justice on behalf of the Government of the United States, and that application be made to the court to direct the return of the vessel to the owners upon due proof of their ownership and of the facts constituting a violation of neutrality.

In reply, allow me to say that as the vessel was in American jurisdiction up until the time of the filing of the suit against her, pending consideration of the question as to whether she was entitled to the privileges claimed for her by the German Government by virtue of Article 19 of the treaty of 1799, and as this government reached a decision on that question only after the libel had been filed, I am unable to accept your suggestion that the presence of the *Appam* in American waters, in the circumstances, constituted a violation of the neutrality of the United States. Holding this view, I regret that I am unable to comply with your request to have official representations made to the court in the sense of your note under acknowledgment.¹²

It would seem that, inasmuch as the Appam entered American jurisdiction under a claim of right, which right was regarded doubtful by the United States Government, it was properly within our jurisdiction until it was decided by the Government that the treaty in question did not grant this right, and that the right claimed did not exist under general international law; and that the vessel became a trespasser and liable to forfeiture and restitution only after it had been informed by the United States that its presence under the circumstances was in violation of the rights of this Government and compromised the neutrality of the United States. It is indeed true that the provisions of Convention No. 13 of the Second Hague Peace Conference concerning the Rights and Duties of Neutral Powers in Naval War, forbade the entry of the Appam if that convention were in force, and the acceptance of the prize articles by the United States, with the exclusion of the article permitting the vessel to remain in neutral jurisdiction pending a decision of the prize court of capture, stated the attitude of the United

¹² Special Supplement to this JOURNAL for October, 1916.

States upon these questions. But it is clear that a government scrupulous in the performance of its duties under a treaty would hesitate to overrule a treaty admittedly in force by a convention of doubtful effect. When, however, the Secretary of State, or the court, decided that the treaty did not apply to the case of the *Appam*, then the right of that vessel, under the circumstances, to enter an American port and to remain in it during the war depended upon international law, and in the absence of a general agreement, the United States could invoke the convention, either as declaratory of international law, or as in accordance with its practice. The result might have been the same in the end, although it would have been reached by a different method.

In the third and concluding portion of the opinion, Judge Waddill takes issue with the contention of the German Government "that the Appam and her cargo can not be proceeded against in these causes, because title to the same vested in the German Government by reason of capture at sea by a German war vessel from an enemy country; that the Appam is a lawful prize of war, entitled to remain in the waters of the United States, a neutral Power, without interference on the part of that government; and that its title can only be enquired into and divested by the action of the prize court of their own country." The court apparently considered that title did not pass to the captor until a decision had been had in the court of the captor that the vessel was lawful prize, and that such decision could not take place legally in the captor's country while the prize was lying as spoils of war in a neutral port. On the first point, the court quotes the case of the Nassau (4 Wallace, 634), arising out of the Civil War, and the Manila Prize Cases (188 U. S. 260). In the first case, Chief Justice Chase, speaking for the court, said:

It is the practice with civilized nations when a vessel is captured at sea as a prize of war, to bring her into some convenient port of the government of the captor for adjudication. The title is not transferred by the mere fact of capture, but it is the duty of the captor to send his prize home, in order that judicial inquiry may be instituted to determine whether the capture was lawful, and if so, to settle all intervening claims of property.

In the Manila Prize Cases, the Supreme Court held that "Ordinarily

the property must be brought in for adjudication, as the question is one of title, which does not vest until condemnation."

It will be noted that in the Nassau case, the court said that "it is the practice"; and that in the Manila Cases, it uses the expression "ordinarily." There is much confusion in the books, some cases appearing to lay it down that title does not pass until the decision of a prize court of the captor's country, while others limit themselves to saying it is the "practice," that "generally," or "ordinarily" title passes by decision of a prize court. This matter was very carefully considered by the Court of Claims in Commodore Stewart's Case (1 Court of Claims, 113), decided in 1864, when the court found itself obliged to decide. much to its regret, against Captain Stewart, who, in command of the Constitution, captured, as every schoolboy knows, the Cyane and Levant during the war of 1812, or rather, after peace had been declared. The gallant captain carried the Cyane to New York, where it was condemned to him as good and lawful prize. The Levant put back into a Portuguese port, where it was taken by the British in violation of Portuguese neutrality. Captain Stewart maintained that the title passed by mere capture, and that he was therefore entitled to the value of the vessel. The court distinguished between the right of the capturing nation and the title of the individual captor to the property, holding that upon capture the title enured to the benefit of the nation, and that it was only taken out of the nation and vested in the individual captor, if the law allowed the captor the prize in whole or in part, by a decision of the prize court confirming the validity of the capture and decreeing it to the individual captor. The point is so important as to justify a quotation from the opinion in the case. Thus, Chief Justice Casey, speaking for the court, said:

There is no doubt if this vessel had reached a port of the United States she would have been condemned as a good prize to the claimants; for the Cyane, taken in the same engagement and at the same time, was actually so condemned. The title to property lawfully taken in war may, upon general principles, be considered as immediately divested out of the original owner and transferred to the captor. As to personal property, it is considered as lost to the owner as soon as the enemy has acquired a firm possession, which is in general considered as taking place after the lapse of twenty-four hours, or after the booty

has been carried into a place of safety, infra præsidia. Grotius, Lib. III, cap. 6, § 3; cap. 9, § 14; Kluber, Droit des Gens. Moderne de l'Europe, § 254; Vattel, bk. III, cap. 14, § 196; cap. 14, § 209; Heffter, das Eu-

ropäische Völkerrecht, § 136.

It is upon authorities like the foregoing that the right and title of the claimants in the present case is predicated. But these general expressions refer to the time when the title of the original owner is divested, rather than when the right of the individuals making the capture vests. Attention for a moment to the foundation and origin of the right of the individual to the captured property will assist us in the solution of this question. That right is acquired not in virtue of the seizure of it as enemies' property, but by grant of the sovereign whose commission the captor bears. Judge Story says: "It is now clear that all captures in war inure to the sovereign, and become private property only by his grant." The Emulous, 1 Gall. 569; 11 East. 619.

The right to all captures from the earliest times has vested primarily in the sovereign, and no individual can have any interest in a prize, whether made by a public or private armed vessel, except that which he receives from the bounty of the State. Law of Marine Warfare, p. 374; Valin, Com. II. 235; Bynk., cap. 17; Sir L. Jenkins' Work, p. 714. An interest in a prize can only be derived from the government. 1 Phillips on Insurance, 182, § 320; The Joseph, 1 Gall. 558; 11 East. 428. It is even denied that the individual captors, prior to condemnation, have any insurable interest in the captured property. Routh v. Thompson, 11 East. 432; DeVause v. Steele, 6 Bingh. N. C. 370; Lucena v. Crawford, 3 B. & P. 75; 5 Id. 323; Crawford v. Hunter, 8 T. Rep. 13.

The principle applicable to this case to be extracted from the authorities cited is, that by the capture of this ship the property to it vested in the United States, and whatever right to or title in it the claimants acquired must be derived from their sovereign authority. (1 Court of Claims, 113.)

The late W. E. Hall draws the same distinction, and holds that in the case of enemy property, title passes to the captor's country immediately upon capture, and that it is taken out of the captor's country and vested in the individual captor by a prize court of that country, if individual captors are allowed an interest in the prize. Indeed, Mr. Hall goes further, and shows that a decision of a prize court is otherwise not necessary in the case of enemy property, because all enemy property upon the high seas is subject to capture and confiscation; that the intervention of a prize court is due to the interests of neutrals; and that in the case of neutral's property only the decision of a prize court is necessary to pass title. Thus he says:

As the property in an enemy's vessel and cargo is vested in the state to which the captor belongs so soon as an effectual seizure has been made, they may in strictness be disposed of by him as the agent of his state in whatever manner he chooses. So long as they were clearly the property of the enemy at the time of capture, it is immaterial from the point of view of International Law whether the captor sends them home for sale, or destroys them, or releases them upon ransom. But as the property of belligerents is often much mixed up with that of neutrals, it is the universal practice for the former to guard the interests of the latter, by requiring captors as a general rule to bring their prizes into port for adjudication by a tribunal competent to decide whether the captured vessel and its cargo are in fact wholly, or only in part, the property of the enemy. (Hall's International Law, 4th ed., sec. 150.)

But whether or not the title passes to the enemy country by capture without the intervention of the judgment of a prize court, and whatever the law may be on this point, there is no doubt that the attitude of the United States is against taking jurisdiction when a prize is not within its ports, and is opposed to the right of a foreign captor to bring its prize into the United States and to allow it to remain in this country pending judicial proceedings in a prize court of his nation. the attitude, but it has not always been the practice of the United States. A learned international lawyer and judge, Sir Robert Phillimore, felt himself justified in saying in his Commentaries upon International Law, that "an attentive review of all the cases decided in the courts of England and the North American United States leads to the conclusion that the condemnation of a capture, by a legal prize court, sitting in the country of the belligerent, of a prize lying at the time of the sentence in a neutral port, is irregular, but clearly valid." (Phillimore's Commentaries upon International Law, 3d ed., Vol. III, sec. CCCLXXIX.)

In principle this should not be permitted; in practice, it has been allowed, and the case of the *Polka* (Spink's Eccles. and Adm. Reports, 447), decided by Dr. Lushington in a capture made in the Crimean War, is not to be taken as a prohibition of the practice, although it was a condemnation of it. It must be borne in mind that that great judge condemned the captured ships lying in a neutral port, because they could not be removed to British jurisdiction without danger of loss. He insisted that his condemnation of the prizes lying in a neutral juris-

diction should not be taken as a precedent, but the important point is that he assumed jurisdiction and passed title. This fact clearly weakens his condemnation of the principle to be found in the portion of his opinion quoted by Judge Waddill:

I wish it, moreover, to be expressly understood, that this case is decided upon its own peculiar circumstances, and is not to be considered as a precedent for the condemnation of a prize while lying in a neutral port. The rule is that the prize shall be brought into a port belonging to the captor's country, and the court must guard itself against allowing a precedent to the contrary to be established.

The following note by Dana to his edition to Wheaton is quoted by Judge Waddill, and is, it is believed, correct both as to the principle and practice.

But apart from any such practice of neutrals, it seems clear that to allow prizes to fly to a neutral port and remain there in safety while prize proceedings are going on in a home port, would give occasion to nearly all the objections that exist against prize courts in neutral ports. It seems, therefore, to be the tendency, if not the settled rule, now, that a decree of condemnation will not be passed against prizes remaining aboard, unless in case of necessity, or if passed, will not be respected by other nations. (Wheaton's International Law, 8th Am. ed. Sec. 391.)

But, even although there is doubt on this point, it does not follow that the United States would not now be justified in refusing to recognize the validity of a German prize court decision in the case of the Appam while that vessel was lying as the spoils of war in an American port. The exclusion by the United States of Article 23 from the Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War, stated in clear and unmistakable terms that, in its opinion, "a neutral Power may" not "allow prizes to enter its ports and road-steads, whether under convoy or not, when they are brought there to be sequestrated pending the decision of a prize court." The District Court therefore was, it would seem, justified in rejecting the German contention that it could not take jurisdiction of the case of the Appam pending judicial proceedings in Germany; for if the view which has just been advanced is correct, the decision of a German prize court under the circumstances would be null and void in so far as the United

States was concerned. It would be as if it had not been, and the question for the American court to consider was, whether irrespective of the attitude of the German judicial authorities, the *Appam* was guilty of such a violation of American neutrality as to justify its return to the original owners.

Clearly, the capture of the Appan upon the high sea was not a violation of American neutrality, and it will be interesting to have the opinion of the Supreme Court on appeal upon the question whether the mere entry of the Appam into an American port, there to lay up during the war, claiming the right so to enter by virtue of a treaty between the captor's country and the United States, was in itself such a violation of neutrality as to justify the court in restoring it to the original owners, in view of the fact that the vessel had been allowed to enter and had not been notified by the Department of State that its entry was contrary to the treaty under which it claimed, and when the Secretary of State, in an official communication to the British Ambassador, declared himself unable to accept the "suggestion that the presence of the Appam in American waters, in the circumstances, constituted a violation of the neutrality of the United States." The case would be different if the United States had refused the Appam permission to enter or if, upon notice of its entrance, the government had ordered the vessel to depart as its presence violated American neutrality. Being allowed to enter and not being notified to depart, it would seem that there is ground for the contention that until the United States notified the Appam that its presence was, under the circumstances, a violation of American neutrality, the vessel was not a trespasser and was justified in remaining under such conditions as the United States might impose until its right to enter and to remain had been decided.

JAMES BROWN SCOTT.

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EDITORIAL COMMENT

THE BLACK LIST OF GREAT BRITAIN AND HER ALLIES

In the editorial comment on the Economic Conference,¹ attention is called to the recommendation that effective measures be taken during the war by the Allied Powers to prevent trade with the enemy, whether the trade proceed directly from the territory of the Allies, or indirectly through neutral countries, either by citizens thereof, or by enemy subjects domiciled therein, or by firms or corporations under enemy control or supervision. This particular recommendation was apparently de-

signed to have the Allied Powers adopt a uniform policy which, if put into force and effect, would not only prevent their subjects or citizens from trading directly with the enemy, but indirectly as well by the interposition of neutral countries.

In connection with this recommendation, it is necessary to consider an Order in Council and an Act, each of which is eminently proper in itself because it applies only to British subjects within British jurisdiction, and forbids them, under penalties, to do the things proscribed. But legal in respect to British subjects, they are inequitable in their effects upon neutral subjects or citizens, or persons domiciled in neutral countries, because if carried out, they greatly lessen, if they do not wholly prevent neutrals from trading with enemy countries, which they are entitled to do without let or hindrance with unblockaded ports, or unless in commodities known as articles of contraband. The desired effect is produced, first, by prohibiting British subjects from trading with foreign ports without a license so to do in ships of less than 500 tons burden, which enables Great Britain practically to control commerce upon the high seas as, in present circumstances, the trade of the world is largely carried in British bottoms; secondly, by adopting nationality as the test of enemy character, in addition to the time-honored test of domicile.

It will be advisable to consider somewhat in detail the Order in Council and Act before attempting a criticism of the effects of their provisions upon neutral rights. The Order in Council is dated November 10, 1915, of which the material portion is as follows:

That from and after the first day of December, 1915, no British steamship registered in the United Kingdom exceeding 500 tons gross tonnage shall carry any cargo from any foreign port to any other foreign port—and whether or not such ship while carrying such cargo calls at any intermediate port within His Majesty's Dominions—unless the owner or charterer of such steamship has been granted exemption by license as hereinafter provided.

The Order in Council then proceeds to clear up any doubt as to the meaning of "foreign port," by saying that the expression "shall mean and include any port outside His Majesty's Dominions." And in order that the question of licenses should be carefully considered, and that the whole matter should be under the control of responsible officers, it was next provided that the President of the Board of Trade should appoint a committee to carry out the provisions of the order; that the committee should have power "to grant licenses of exemption therefrom to or in

favor of owners and charterers of such steamships as aforesaid, which licenses may be general in reference to classes of ships or their voyages or special." 2

The purpose of the Trading with the Enemy Act of Dec. 23, 1915, is, as stated in the brief preamble, to extend restrictions upon trading with the enemy to persons not residing or carrying on business in enemy territory. The material portions of this Act are as follows:

- (1) His Majesty may by proclamation prohibit all persons or bodies of persons, incorporated or unincorporated, resident carrying on business or being in the United Kingdom, from trading with any persons or bodies of persons not resident or carrying on business in enemy territory or in territory in the occupation of the enemy (other than persons or bodies of persons, incorporated or unincorporated, residing or carrying on business solely within His Majesty's dominions), wherever by reason of the enemy nationality or enemy association of such persons or bodies of persons incorporated or unincorporated, it appears to His Majesty expedient so to do; and if any person acts in contravention of any such proclamation he shall be guilty of a misdemeanour, triable and punishable in like manner as the offence of trading with the enemy.
- (2) Any list of persons and bodies of persons, incorporated or unincorporated, with whom such trading is prohibited by a proclamation under this act, may be varied or added to by an order made by the Lords of the Council on the recommendation of a Secretary of State.
- (3) The persons and bodies mentioned in this act are assimilated to enemy persons and the provisions of the Acts of 1914 and 1915 relating to trade with the enemy, and the punishments therefor, are extended to such persons and bodies.
- (4) For the purpose of this act a person shall be deemed to have traded with a person or body of persons to whom a proclamation issued under this act applies if he enters into any transaction or does any act with, to, on behalf of, or for the benefit of such a person or body of persons, which, if entered into or done with, to, on behalf of, or for the benefit of an enemy, would be trading with the enemy.

It will be observed that the provisions of the Act apply to persons of enemy nationality residing outside of His Majesty's dominions, which is another way of saying enemy subjects residing in neutral countries, because persons or bodies corporate or unincorporate residing in Allied countries would by the laws of these countries be prevented from trading with the enemy.

We are not left to conjecture that the act adopts the theory of nationality as well as domicile, because the note of the British Secretary of

² The full text of this Order in Council and of the diplomatic correspondence referred to herein, is printed in the Special Supplement to this JOURNAL for October, 1916.

State for Foreign Affairs, dated February 16, 1916, expressly says so, in the following paragraph:

The act was framed with the object of bringing British trading with the enemy regulations into greater harmony with those adopted by the French Government since the commencement of the war by applying in some degree the test of nationality in the determination of enemy character in addition to the old test of domicile, which experience has shown can not provide a sufficient basis under modern commercial conditions for measures intended to deprive the enemy of all assistance, direct or indirect, from national resources.

The note also makes a defense of the Act, which had been severely criticized in a cable of Secretary Lansing, dated the 25th ultimo, as will be considered later. In the first place, it is said that the Act is not framed in such a way as to make its provisions mandatory; that it vests in the government discretion; and that the government intends to use the discretion with which it is empowered to free persons and bodies from its provisions when this can be done without affecting British interests; that the provisions of the act are in accordance with the French theory and practice of nationality, and of other countries adopting the national theory; that in any event the act is "a piece of purely domestic legislation," empowering the government "to restrict the activities and trade of persons under British jurisdiction in such a manner and to such an extent as may seem" to the British authorities "to be necessary in the national interest;" and that the right thus claimed appears to His Majesty's Government "to be inherent in sovereignty and national independence."

We are now in a position to consider the effect of the Order in Council and of the Act in question upon neutral rights and neutral interests. The British authorities have, without question, the legal right to exercise complete and exclusive control over all persons and property within their jurisdiction. They can, if they choose, order British vessels to remain in British ports, as did American vessels under President Jefferson's embargo preceding the War of 1812. They may confine them to the coasting trade or restrict them to trade with Great Britain and its dominions across the seas. They may, if they choose, allow them to trade with foreign countries, and in the licenses which may be carried they can embody whatever conditions they may please.

No authority seems to be needed for this right or its exercise on the part of Great Britain, but it may be well to quote in this connection a passage from the celebrated judgment of Chief Justice Marshall in the case of the Schooner Exchange, (7 Cranch, 116, 136), decided in 1812:

The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation, within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

But there is a distinction between legality and equity—a distinction common to the law of Imperial Rome as it is to the law of Imperial Britain. And this very controversy between Great Britain and the United States springs out of the exercise of an admittedly legal but inequitable right. Parliament had the legal right to tax the American That right was exercised, and by virtue of its exercise the United States exists today as a nation. It is clearly legal for Great Britain to require of its merchantmen above or under 500 tons burden a license to trade with foreign countries; but in view of the circumstances existing today, not by the act of the United States or any of the neutral countries, but by the act of Great Britain and its enemies, the conditions of peace have been changed to conditions of war, and the exercise of the right in question entails a loss to neutrals because it deprives them of their rights as neutrals to trade with unblockaded ports of enemy countries, with neutral ports and through neutral countries with the enemy, subject to the right of visit and search, and confiscation of merchandise deemed contraband of war. Now, the inequity of the Order in Council lies in the fact that, as the carrying trade of the world is largely in British bottoms, and as the merchantmen of Britain's enemies have been driven from the seas, and the vessels of neutrals are subjected to visit, seizure, and vexatious restrictions, Great Britain can by a refusal of licenses to its vessels to trade with neutral countries, except under conditions which Great Britain itself prescribes, either force neutral merchants to give up a large part of their trade with enemy countries, or to accept the conditions which Great Britain chooses to impose.

It must be admitted, however, that Great Britain is within its legal rights in the matter of licenses to its merchant vessels engaging in trade with foreign countries. It must also be admitted that Great Britain is likewise within its legal rights in the Act of December 23, 1915, which

does not subject persons or bodies in neutral countries to pains and penalties for trading with Britain's enemies, and which could not legally be done in the United States since the Declaration of Independence of July 4, 1776, or the 3d day of September, 1783, when the independence of the United States was recognized by Great Britain. As the British Secretary of State says in the note of February 16, 1916, the Act is "a piece of purely domestic legislation," limited to persons and bodies within the territorial jurisdiction of Great Britain, forbidding them to do certain things under pains and penalties, which are prescribed. So far the Act is as unobjectionable as it is legal. But the effects of the Act are not confined to persons or bodies within British jurisdiction, and in so far as it affects persons and bodies in neutral territory, it is as inequitable as it is legal. Now, the effect of the Act in plain terms is to forbid persons or bodies within British Dominions to trade, let us say, with persons or bodies in the United States if the persons or bodies are of enemy nationality or if the goods received by these persons or bodies in the United States are to be transported, we will say, to another neutral country, such as Holland, from which they may find their way into Germany. Now, it happens that Great Britain is a great manufacturing center, and it also happens that by virtue of the war and the British control of the seas, it carries today the world's commerce. Therefore, the prohibition in the Order in Council, although limited to British shippers, affects neutrals, and the prohibitions of the Act, restrictive as they are to persons and bodies within British dominions, likewise affect persons and bodies in neutral territories. If they wish to trade, they trade upon British terms, and Great Britain is determined that articles useful to the enemy shall not reach the enemy directly from British dominions, and indirectly from neutral territories.

Upon receiving the Enemy Trading Act of December 23, 1915, Secretary Lansing cabled the American Ambassador to lay before the British Foreign Office a brief but energetic protest, which expressed the views of the United States. In this cablegram, Secretary Lansing said:

The Department has reached the conclusion that this act is pregnant with possibilities of undue interference with American trade, if in fact such interference is not now being practiced. As it is an opinion generally held in this country, in which this Government shares, that the act has been framed without a proper regard for the right of persons domiciled in the United States, whether they be American citizens or subjects of countries at war with Great Britain, to carry on trade with persons in belligerent countries, and that the exercise of this right may be subject to denial or abridgment in the course of the enforcement of the act, the Government of the United

States is constrained to express to His Majesty's Government the grave apprehensions which are entertained on this subject by this Government, by the Congress, and by traders domiciled in the United States.

In accordance with these views, Secretary Lansing made "a formal reservation, on the part of this Government, of the right to protest against the application of this Act, in so far as it affects the trade of the United States, and to contest the legality or rightfulness of imposing restrictions upon the freedom of American trade in this manner."

Notwithstanding this protest on the part of the United States, Great Britain has not changed its policy, although it has expressed its willingness to remove certain firms from the list of the proscribed when convinced that this can be done without injury to British interests, of which, of course, the British authorities are to judge.

The commission charged with the administration of the Act has looked into the transactions of persons and bodies in all neutral countries, and has drawn up a list, popularly called a "blacklist," of persons or firms with whom or with which British subjects shall not trade. The possible effect of this policy and the attitude of the United States toward it are set forth in the following extract from a protest to Great Britain contained in Acting Secretary of State Polk's note of July 26, 1916:

The scope and effect of the policy are extraordinary. British steamship companies will not accept cargoes from the proscribed firms or persons or transport their goods to any port, and steamship lines under neutral ownership understand that if they accept freight from them they are likely to be denied coal at British ports and excluded from other privileges which they have usually enjoyed, and may themselves be put upon the blacklist. Neutral bankers refuse loans to those on the list and neutral merchants decline to contract for their goods, fearing a like proscription. It appears that British officials regard the prohibitions of the blacklist as applicable to domestic commercial transactions in foreign countries as well as in Great Britain and her dependencies, for Americans doing business in foreign countries have been put on notice that their dealings with blacklisted firms are to be regarded as subject to veto by the British Government. By the same principle Americans in the United States might be made subject to similar punitive action if they were found dealing with any of their own countrymen whose names had thus been listed. * *

There are well-known remedies and penalties for breaches of blockade, where the blockade is real and in fact effective, for trade in contraband, for every unneutral act by whomsoever attempted. The Government of the United States cannot consent to see those remedies and penalties altered or extended at the will of a single Power or group of Powers to the injury of its own citizens or in derogation of its own rights. Conspicuous among the principles which the civilized nations of the world have accepted for the safeguarding of the rights of neutrals is the just and honorable principle that neutrals may not be condemned nor their goods confiscated except

upon fair adjudication and after an opportunity to be heard in prize courts or elsewhere. Such safeguards the blacklist brushes aside. It condemns without hearing, without notice, and in advance. It is manifestly out of the question that the Government of the United States should acquiesce in such methods or applications of punishment to its citizens.

It will be observed that in Secretary Lansing's protest of January 25, 1916, he informed Great Britain of "the grave apprehensions which are entertained on this subject by this government, by the Congress, and by traders domiciled in the United States." This warning apparently fell on deaf ears, for, preferring legality to equity, Great Britain insists upon the Order in Council of November 10th and the Enemy Trading Act of December 23, 1915. The Congress of the United States therefore has taken action, and on September 8, 1916, the President approved a bill of which Section 806 authorizes him to refuse clearances to vessels of a belligerent government seeking to carry into effect the provisions of the Order and the Act, or to refuse privileges in American jurisdiction which have heretofore been enjoyed. The Act of Congress uses the term "belligerent," for the Allied Governments agreed in the Economic Conference held in Paris, June 14, 1916, to take the measures necessary to put into effect the policy contained in the Order in Council of November 10th, and the Enemy Trading Act of December 23, 1915, without, however, specifically mentioning the Order or the Act.

In connection with this action of the Allied Governments, it is interesting to recall the attitude of the United States during the Civil War, and the measures which it felt necessary to take in order to prevent not only contraband but all articles from reaching the Southern States. It was felt by President Lincoln and his advisers, and Congress shared their views, that the South should be starved into submission, and it was. We were so anxious to prevent trade with the Southern States that President Lincoln proclaimed a blockade on April 19, 1861 of the entire Southern coast, without apparently recognizing that a blockade of the Southern territory was in law a recognition of the belligerency of the South, entitling them to the rights and imposing upon them the duties of belligerents. To render this blockade effective, which it was not in the first two years of the war, the government systematically and rightly extended the doctrine of continuous voyage to blockade, and under protest of neutral governments, and against the consensus of opinion of publicists, maintained the legality of such extension. This policy, however harsh it may have seemed at the time to neutral countries, was both legal and successful. The Confederacy collapsed because of it.

An Act of Congress, approved May 20, 1862, authorized in its first section the Secretary of the Treasury "to refuse a clearance to any vessel or other vehicle laden with goods, wares or merchandise, destined for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such goods, wares, or merchandise, or any part thereof, whatever may be their ostensible destination, are intended for ports or places in possession or under control of insurgents against the United States." In its second section, it made it lawful for the Collector of Customs granting a clearance "for either a foreign or domestic port" to require a bond "equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the said cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any persons or parties in insurrection against the United States." In the third section, the Secretary of the Treasury was further empowered "to prohibit and prevent the transport in any vessel, or upon any railroad, turnpike, or other road or means of transportation within the United States, of any goods, wares, or merchandise of whatever character, and whatever may be the ostensible destination of the same, in all cases where there shall be satisfactory reasons to believe that such goods, wares, or merchandise are intended for any place in the possession or under the control of insurgents against the United States; or that there is imminent danger that such goods, wares, or merchandise will fall into the possession or under the control of such insurgents." 3

It will be observed that no distinction is made in the Act between domestic or foreign vessels destined to a foreign or domestic port; between goods owned by American citizens or by neutral merchants; and it was also provided that goods which might fall into the hands of insurgents irrespective of American or neutral ownership should not be carried or transported to any port within the United States. This Act was put into effect by regulations drafted by the Secretary of the Treasury. It was justified by Secretary Seward in his correspondence with the British Government; and in the opinion of the undersigned, the United States was within its legal rights in passing legislation of this kind, for it was domestic legislation, although it affected foreign and therefore neutral merchants; because the United States was justified in

² U. S. Statutes at Large, Vol. 12, p. 404.

refusing to allow any action to take place within its jurisdiction which, if committed, would or might tend to furnish the Confederate States with the supplies which they needed in their war with the Government of the United States.

This Act is not quoted as a justification of the British order and statute, for it was limited to transactions taking place wholly within the United States and which the United States could therefore control, and it was in a way an application of the doctrine of continuous voyage in so far as foreign vessels touching American ports were concerned. It is quoted, however, as showing that governments in case of war are inclined to take measures against the letter and spirit of which they protest when neutrals, for the British Government protested against the enforcement of this Act of Congress in so far as British interests were concerned.

The United States has protested through diplomatic channels, and properly in the opinion of the undersigned, against the Order in Council of November 10th and the Enemy Trading Act of December 23, 1915. Diplomatic protests were unavailing in 1862—diplomatic protests appear to be unavailing in 1916.

The United States has gone further and has passed an Act of Congress authorizing the President of the United States to refuse clearances to foreign vessels and to deprive them of privileges they possess in American ports, provided the belligerent country to which these vessels belong should attempt to enforce the policy of the Order in Council and of the Enemy Trading Act.

In the opinion of the undersigned, this government is within its rights in 1916, just as it was within its legal rights in the year 1862; but the United States and Great Britain are not in the same position that they were in the year 1862, because they have mutually agreed to submit legal disputes to arbitration and to submit all disputes not arbitrated or arbitrable to a commission of inquiry. On April 4, 1908, Mr. Elihu Root, then Secretary of State, and Mr. James Bryce, then British Ambassador, signed an arbitration convention, duly advised and consented to by the Senate on April 22, and proclaimed as the law of the land on June 5, 1908. This convention was limited to a period of five years. It expired in 1913, and on May 31, 1913, it was renewed for a further period of five years. The first article of this convention provides that

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third Parties.

If the United States contends that the action of Great Britain in the matter of the Order in Council of November 10th or the Enemy Trading Act of December 23, 1915, is illegal; or if Great Britain should contend that the Act of Congress of September 8, 1916, is illegal, the question must be arbitrated according to the terms of the treaty of 1908. If, however the legality of the Order in Council and the British Act and our Act of Congress be admitted, and if action be taken by either government under their authority, the governments are not free to act according to their sovereign pleasure. On September 15, 1914, Great Britain and the United States put their hands and seals to one of Mr. Bryan's "Treaties for the Advancement of Peace." Ten days later, this treaty was advised and consented to by the Senate and was proclaimed as the law of the land by the President on November 11, 1914. This treaty provides that all differences between the two countries which diplomacy has failed to adjust, the settlement of which is not provided for and in fact achieved under existing agreements, shall be submitted to a commission of inquiry composed of five members, each contracting party agreeing to submit to the commission the evidence which may be necessary to enable it to frame a report, which may be prepared and submitted to each of the governments within a twelvemonth from the date of submission, and the contracting parties agree during the period of investigation to refrain from any hostile act. 4 It is true that each government is free to accept the recommendations of the report should they contain any, or to reject them, but it is believed that the investigation in itself will throw such light upon the disputes that the two countries will be able to compose their differences without a resort to arms. Had there been but a fortnight's delay between the Austro-Hungarian ultimatum to Serbia and Serbia's reply, how different the history of the world might have been. Fortunately, there is a year in the case of differences between Great Britain and the United States.

The Act of Congress of September 8, 1916, contains a final paragraph to Section 806 relating to the matter of clearances and the deprivation of privileges in American ports to belligerent merchantmen, which should be noted. This paragraph states "that the President of the

⁴ For the full text of the treaty, see Supplement to this JOURNAL, p. 281.

United States is hereby authorized and empowered to employ such part of the land and naval forces of the United States as shall be necessary to carry out the provisions of this Act." In so far as the exercise of this authorization would be inconsistent with the treaty of September 15, 1914 for the advancement of peace, we may be sure that the President will make no use of this authorization. And we may also be sure that the President will be loath to exercise the authority vested in him by the Act of Congress in violation of treaties in force between the belligerent countries and the United States. Although an Act of Congress would bind all American authorities, including the President, even if it were so inconsistent with treaties as to abrogate them, an authorization is not mandatory, it is not a command, and the President will doubtless be careful of the good faith of the nation even in the trying conditions to which American merchants are exposed.

The purpose of this editorial comment is two-fold. First, to point out the nature and purposes of British policy in attempting to prevent supplies from reaching enemy countries through the direct or indirect cooperation of British subjects, and the policy of the United States in the Civil War has been cited in order to show that it is the right of a Power at war to prevent the forwarding of supplies to the enemy; and second, to show that however serious and acute the controversy may be between Great Britain and the United States to give effect to this policy, there is, through the wisdom and foresight of the responsible statesmen of the two countries, a means at hand to compose their outstanding differences without a resort to arms. For the two countries have not only agreed to an arbitration convention and a commission of inquiry, either to decide or to investigate the disputes, but they have also given themselves a twelvemonth for the appeal to reason, and they have pledged their good faith not to resort to arms during the appeal to reason.

JAMES BROWN SCOTT.

THE WITHDRAWAL OF THE DECLARATION OF LONDON ORDERS IN COUNCIL

On July 7, 1916 the British Government issued an Order in Council, withdrawing the Order in Council of October 29, 1914 which adopted the provisions of the Declaration of London with "the exclusion of the lists of contraband and non-contraband" and modification of the articles relating to destination and the onus of the proof as to innocent destination. This Order in Council, of October 29, 1914 also authorized

the withdrawal of Article 35 of the Declaration of London, which stated that "conditional contraband is not liable to capture, except when on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged at an intervening neutral port." This withdrawal was authorized when one of the Principal Secretaries of State was shown "that the enemy Government is drawing supplies for its armed forces from or through a neutral country." The other Orders in Council amending that of October 29, 1914 were also withdrawn on July 7, 1916.

One of the fundamental principles of the Declaration of London was contained in Article 65, which stated that the provisions of the Declaration formed "an indivisible whole." The General Report states "A legitimate expectation would be defeated if one Power might make reservations on a rule to which another Power attached particular importance."

Great Britain had by Order in Council of August 20, 1914 introduced many changes in the Declaration of London. The United States on October 22, 1914 in a communication to the American Ambassador in London had accordingly said:

Inasmuch as the British Government consider that the conditions of the present European conflict make it impossible for them to accept without modification the Declaration of London, * * * this Government will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States.

In the British explanation, July 7, 1916, of the grounds for the withdrawal of the various Orders in Council relating to the Declaration of London, it is stated that the Orders adopting the provisions were issued, not because the Declaration in itself possessed "for them the force of law, but because it seemed to present in its main lines a statement of the rights and the duties of belligerents based on the experience of previous naval wars." Later the same explanation states that as the Declaration of London, drawn in 1909, as modified by various Orders in Council, did "not stand the strain imposed by the test of rapidly changing conditions and tendencies which could not have been foreseen," the Allies, in order that their purpose might not be exposed to misconstruction, "have therefore come to the conclusion that they must confine themselves simply to applying the historic and admitted rules of the law of nations."

ECONOMIC CONFERENCE OF THE ALLIED POWERS

The great war which is either killing or maiming the young manhood of Europe, has been unbelievably destructive of property in those portions of Europe which have been invaded by one side or the other and have been the scene of hostile operations. The natural resources of those stricken countries have been blighted and destroyed. What measures may be taken to make good the loss of life, if it can be made good, or to preserve the coming generation from the consequences of the war, can not be foretold. But the Teutonic Powers and their allies have, it is said, considered the policy which should be adopted in order to make good the economic losses of the war and the Allied Powers have given this subject great consideration, have hit upon a plan for present and future operation, and have entered into an agreement to put this plan into force and effect.

The Allied Powers not only recognize, as did the Second Hague Peace Conference, "the solidarity uniting the members of the society of civilized nations," but they recognize and proclaim by their economic conference, held in Paris, June 14–June 17, 1916, a very special "solidarity of views and interests," and representatives of these Powers in the Economic Conference proposed "to their respective governments suitable measures for realizing this solidarity," a solidarity which in uniting, unfortunately separates them from other members of the society of nations.

It is curious to note that the measures taken by one or the other of the belligerent groups are not of their own initiative. One group makes up its mind that the other group has done, is doing, or is planning to do something; therefore, the other group takes steps to counteract this action, demonstrating in the very act that they are not and that they can not be independent, one of another, and that their actions depend and must depend upon the conduct of the others. Even in proclaiming their independence, the preamble proves their interdependence. Thus the representatives of the Allied Governments at the Economic Conference perceived that the Central Powers "are preparing to-day, in concert with their allies, a struggle in the economic domain which will not only survive the re-establishment of peace but, at that very moment, will assume all its amplitude and all its intensity;" that the agreement which is being prepared for this purpose amongst the enemies of the Allies "has for its evident object the establishment of their domination

over the production and the markets of the whole world and to impose upon the other countries an inacceptable hegemony;" wherefore

The representatives of the Allied Governments consider that it is their duty, on the grounds of necessary and legitimate defense, to take and realize from now onward all the measures requisite on the one hand to secure for themselves and the whole of the markets of neutral countries full economic independence and respect for sound commercial practice, and on the other to facilitate the organization on a permanent basis of this economic alliance.¹

A series of recommendations to the Allied Governments was adopted by the conference designed to give effect to the policy which the Allies regard as necessary for themselves and also for neutral governments, because in these matters each belligerent group, in pushing its own interests, is generously solicitous for the interests of neutrals which must be protected from the assaults of the enemy. The belligerent groups, however, will probably find in the future, as in the past, that the views of neutrals and belligerents radically differ, and that the neutrals will prefer to frame their own policies rather than to have their interests considered and decided by one or the other belligerent group, intent upon its own salvation and upon an economic war, even after the military operations shall have ceased.

The recommendations apply to two periods, namely, the period during the war, and the period of reconstruction after the war. From another standpoint, the recommendations are of three kinds, relating in the first place to measures to be taken during the continuance of the war; secondly, to measures of a temporary character and to be applied during the period of the commercial, industrial, agricultural and maritime reconstruction of the Allied countries; and finally, to permanent measures of mutual assistance and collaboration among the Allies.

The recommendations to be adopted by the Allied Powers and to be put into effect during the war look to the stoppage of trade with enemy countries and to the ousting of enemy firms from Allied countries. In the second period, the measures recommended, called transitory, are of a kind to enable the Allies to get on their feet as it were, after the war, and are calculated to re-establish the industry and commerce of the countries whose industries and commerce have suffered from acts of destruction, spoliation, and unjust requisition during the war, by mutually assisting

¹ The full text of the recommendations of the Economic Conference is printed in the Supplement to this JOURNAL, p. 227.

the countries which have thus suffered; by giving the allied countries a prior claim on their own natural resources; and by preventing what may be called dumping upon them of merchandise of enemy manufacture or origin. The recommendations contemplating measures of a permanent kind relate to mutual assistance and collaboration among the Allies, and are intended to make their countries economically, industrially and agriculturally independent not only of the Central Powers of Europe, but in reality of all Powers; they are to be drafted with the express purpose of promoting trade between the Allied countries, by improving shipping, telegraphic and postal facilities, if need be by government aid, and finally, they are devised to advance not merely their industrial and commercial, but also their intellectual and artistic interests by similar laws in the matter of patents, trademarks, literary and artistic copyright.

It seems advisable to refer more specifically to some of the more important provisions of the recommendations.

Measures during the War

In the first place these measures contemplate uniform laws and regulations prohibiting trade with the enemies, by prohibiting subjects and citizens of the Allies, and all persons residing within their respective territories, from trading with all persons residing within enemy territories, or with enemy subjects, or indeed with persons, firms and companies in neutral countries whose business is controlled in whole or in part by enemy subjects or "subject to enemy influence." The names of the enemy subjects, persons, firms and companies in neutral countries are to be included "in a special list," apparently the so-called Black List, treated elsewhere in the Journal.²

In the next place, the importation of all goods originating in or coming from enemy countries is to be prohibited. Not only is trade with the enemy to be cut off, but contracts with enemy subjects which are conceived by the Allies to be injurious to national interests are to be cancelled unconditionally.

A second class of measures to be devised and put into effect during the war falls under several heads and relates to the policy of sequestration or control of "business undertakings, owned or operated by enemy subjects in the territories of the Allies." The Allies evidently recognize the

principle in theory, if not in practice, that private property belonging to enemy subjects is not to be confiscated, but enemy subjects carrying on business of the kind specified will, because of the loss suffered, fail to see the difference, evident to the Allies, between sequestration and control, on the one hand, and confiscation on the other. Measures are to be taken to wind up some of these undertakings and to realize the assets, and the proceeds of such "realizations" are to remain "sequestrated or under control." It would be obviously unfair to state, or indeed to leave it to be inferred, that sequestration or control is equivalent to confiscation. It is not in form and perhaps not in effect, and yet the losses will doubtless be great and burdensome to the persons involved.

In furtherance of the policy to prevent trade with the enemy, and especially to prevent trade in articles of contraband, or indeed in articles which might be used by the noncombatant population, a recommendation of a very important and drastic kind is made which affects not only the subjects or citizens of the Allies, but also the interests and conduct of neutrals. Thus, uniform lists of absolute and conditional contraband are to be drawn up, and their export is to be forbidden by the mother countries, the dominions, colonies, and protectorates of the Allies. This provision is restricted to the Allied countries. The next, however, directly affects neutrals, although the measures in form, though not in effect, only concern the Allies.

It is foreseen by the Allies that articles exported from their countries to neutral countries may be re-exported from these latter to enemy countries and thus indirectly but nevertheless in fact find their way to the enemy. Therefore, licenses are to be refused to subjects or citizens of the Allies to export commodities to neutral countries unless there are in such countries "control organizations approved by the Allies," or unless, in the absence of such organizations, special guarantees are given limiting the quantities to be exported and placing the transaction under the supervision of Allied consular officers. These provisions are of very great importance because of the fact that British vessels control the carrying trade of the world, and by refusing licenses to vessels to trade with neutral ports, neutrals are largely restricted to their home market unless they agree to regulate their foreign commerce in such a way as may suit the interests or pleasure of the Allies. Regulations of this kind are apparently necessary to complete the policy of blacklisting, referred to supra, p. 832, in connection with that matter.

Temporary Measures to be Devised and Carried into Effect by the Allies
During the Period of Reconstruction after the War

In the first place, as has already been stated, the losses of the Allied countries through acts of destruction, spoliation, and unjust requisition "are to be made good," and the Allies pledge themselves "to secure the restoration to those countries, as a prior claim, of their raw materials, industrial, agricultural plant and stock, and mercantile fleet." These are unusual provisions, but as the Allies are making common cause against the Teutonic Powers and their allies, it seems equitable that the Allied Powers should make good the losses suffered for a common cause.

Leaving out the question of the favored nation treatment for the moment, which forms the second division under this heading, the Allies pledge themselves to secure for themselves "their natural resources" during the period of reconstruction, and undertake for this purpose "to establish special arrangements to facilitate the interchange of these resources."

In the next place, to protect their commerce and industry, agriculture and navigation against "economic aggression, resulting from dumping or any other mode of unfair competition," the Allies agree to subject commerce with the enemy Powers to special treatment during a period of time either by prohibiting altogether the importation of goods of enemy origin, or subjecting its importation "to a special regime of an effective character." During this period, the ships of enemy Powers are to be subjected to special conditions, to be agreed upon through diplomatic channels; and finally, special measures are to be taken jointly or severally to prevent within their respective territories enemy subjects from exercising "certain industries or professions which concern national defense or economic independence."

The Allies accept the doctrine that all treaties of commerce between them and their enemies are ended by the war. They recognize that a provision in their treaties giving favored-nation treatment would inure to the benefit of the Teutonic Powers and their Allies. Therefore they agree that the treaties during the period of economic reconstruction shall be framed in such a way, and for a time to be agreed upon, that their former enemies shall not obtain the benefit of the favored-nation clause. It is recognized that provisions of this kind will bear unequally upon the Allied Powers, but that as it is in their common interest that these

provisions be put into effect, the Allied Powers "assure each other, so far as possible, compensatory outlets for trade" in such cases.

Permanent Measures of Mutual Assistance and Collaboration

The measures of a permanent kind which the conference recommended are even of more importance than those relating to the duration of the war and to the period of reconstruction. They are stated in general terms, but with sufficient definiteness to make it clear that the Allies contemplate at least for the present an economic and commercial union; that they regard themselves as an economic or commercial unit, and that the measures to be framed and to be carried into effect are to be based upon the conception of the permanent interests of the Allied Powers considered as an economic commercial unit. Thus, the Allies are to take the necessary steps, and without delay, "to render themselves independent of the enemy countries" in so far as "raw materials and manufactured articles" are concerned which they may deem "essential to the normal development of their economic activities." The measures are to assure not only the independence of the Allies in the matter of sources of supply, but also the independence of their "financial, commercial, and maritime organization." Undertakings may be subsidized, directed or controlled by the governments. Scientific or technical research may be encouraged by financial assistance. National industries and resources are to be developed. Customs duties or prohibitions of a temporary or permanent character may be imposed; or finally, lest there might be doubt, "a combination of these different methods" may be employed.

The general purpose, it would seem, is sufficiently clear. And yet the Allies are careful to state specifically their object, whatever method may be adopted, and this object is, in the words of the recommendation, "to increase the production within their territories as a whole to a sufficient extent to enable them to maintain and develop their economic position and independence in relation to enemy countries." The Allies recognize, apparently, that in order to carry into effect this object and to secure the free, rapid and inexpensive interchange of their commodities, means of communication between them must be improved. Therefore, they provide for "the establishment of direct and rapid land and sea transportation service, at low rates," and they also agree to provide for "the extension and improvement of postal, telegraphic, and other communications."

As previously pointed out, steps were to be taken to secure uniformity in the laws and procedure regarding patents, trade marks, literary and artistic copyright. The Allies recognize that these matters of a technical kind require much care and thought; therefore meetings of technical delegates are to take place in order that the laws may be assimilated, as far as possible, and identical procedure framed.

Time is apparently to be the essence of this contract or agreement. Therefore in the final section, the Powers represented at the Economic Conference recommend that these provisions be put into effect immediately, and "that their respective governments shall take, without delay, all the measures, whether temporary or permanent, requisite to giving full and complete effect to this policy forthwith, and to communicate to each other the decisions arrived at to attain the object."

The Allied Powers, although bitterly opposed to the Teutonic countries and their methods, are not above adopting German methods when they seem to be to their advantage. Apparently, the Zollverein, which formerly existed between the German states, and which was such a strong incentive to political union, is to make its appearance on an international scale; and, while permitting free trade or freer trade among the Allied Powers, a tariff wall is to be raised, not only against the Teutonic Powers and their allies, but against other Powers as well. To readjust the commercial relations of the world, reciprocity treaties will need to be concluded, if the Allies carry into effect the recommendations of their Economic Conference.

Leaving aside the far-reaching effects of the Economic Conference and of the economic union which it either puts into effect or foreshadows, the effects of which professed economists can only weigh and consider, it seems to be a pity from the international standpoint that the Allied Powers should agree upon a line of conduct calculated to separate them from instead of bringing them together with their present enemies. The world is larger than the Allies and their interests. There is a society of nations in which each member is necessary to the well-being of the other, and each Power now at war was a party to the solemn recognition by the First and Second Hague Conferences of the "solidarity uniting the members of the society of civilized nations." The things of the spirit have their place in the world, and the co-operation of the nations toward a common goal is more to be desired than the prosperity of any country or of any group of countries. A great French statesman said that the delegates to the Hague Conference were there to unite—not to divide;

and it is more necessary today and in the future to unite the nations in spirit, in thought, in deed. We must live together whether we will or not, and wise statesmanship suggests that the barriers that keep nations apart should be leveled, and that obstacles should not be interposed to their free and untrammelled commerce. We must think of the things we have in common; we must regard our civilization as indivisible.

"All are but parts of one stupendous whole,

Whose body Nature is, and God the soul."

JAMES BROWN SCOTT.

THE DEUTSCHLAND

The visit during July of the German commercial submarine *Deutschland* to these shores raises some interesting problems in policy as well as novel points in international law.

Will the use of this new craft effect a revolution in sea-borne trade during future wars? Is it to the interest of the United States and other commercial Powers to encourage this new method of blockade-running? What should be our national attitude or policy toward the future commercial submarine? What are the interests of humanity in the matter? Should they be dealt with as ordinary merchantmen, subject to the rights of visit and search, or should some new rules and principles of international law be applied to them? These are some of the questions which might be asked concerning this new candidate for a privileged position in international intercourse in time of war.

The *Deutschland* was, undoubtedly, a vessel of commerce, or merchantman, as decided by our State Department, and entitled to at least the provisional hospitality of our ports. She had been thoroughly searched by the United States Treasury inspectors and by naval experts. She carried no torpedoes or torpedo tubes, and did not even possess the light rapid-fire guns permitted for defensive purposes on commercial vessels.

It is understood that the diplomatic representatives of France and Great Britain filed formal protests at Washington against allowing the German submarine to leave Baltimore, on the ground that the new craft was potentially a war-ship. But no sound reason or evidence appears to have been offered to substantiate this view.

To the international jurist the most interesting question relates to

the applicability to the new commercial submarine of the rights of visit and search. Are they entitled to a warning and provision for the safety of the crew and any possible passengers, as maintained by our Government in the cases of the *Lusitania*, *Arabic*, etc.?

In an interview with Dr. William Bayard Hale, Dr. von Jagow, the German Minister of Foreign Affairs, is reported to have said:

We claim nothing for this new type of merchantman save that she is entitled to be hailed, visited, and the crew placed in safety before she is destroyed—the precise rights which have been insisted upon for every other merchant ship by your government.

If, after she is hailed, she attempts to escape, she does so at her own risk, and may properly be attacked and sunk. But to allow the attack without warning upon an unarmed, fragile boat, with the lives of the crew at the mercy of a single shot, that is something of which we refuse to believe the United States is capable.

While the *Deutschland* is purely a commercial enterprise, the German Government is naturally watching with a high degree of interest the treatment accorded her by the Government of the United States, and it is certain that the German people are prepared to accept the attitude of Washington on this question almost as decisive on the whole subject of the sincerity of the professions of American neutrality.¹

True it is that the *Deutschland* is a merchantman, entitled to the provisional hospitality of our ports as long as she and others of like kind remain unarmed for offensive purposes and engaged in purely peaceful commercial pursuits. But she is also a blockade-runner, engaged in a highly dangerous business, and must run the risks involved in such an enterprise.

Amos S. Hershey.

THE PURCHASE OF THE DANISH WEST INDIES BY THE UNITED STATES OF AMERICA

On August 4, 1916, the Secretary of State, the Honorable Robert Lansing, and the Danish Minister, the Honorable Constantin Brun, signed a treaty, by the terms of which the United States agreed to purchase and Denmark to sell the Danish West Indies for the sum of \$25,000,000. The treaty was sent by the President to the Senate on August 9th, accompanied by a letter of transmittal by the Honorable Frank L. Polk, Acting Secretary of State, together with a declaration made by the Secretary of State that the United States will not object

¹ Cited from The Fatherland for July 26, 1916.

to the extension by Denmark of its political and economic interests to the whole of Greenland.

The treaty was favorably reported to the Senate by the Committee on Foreign Relations, and on September 7th, it was advised and consented to by the Senate. As, however, the injunction of secrecy has not been removed, and as the two governments appear to have agreed that the text of the treaty will not be published without a special agreement on their part, the Journal cannot print the treaty, and it is only in a position to state its terms in the very general way in which they have appeared in the press. When the injunction of secrecy has been removed and the treaty is made public, the Journal will print the text from official sources. In the meantime, it is of interest to give in summary form the terms of the treaty as they appear in the press, and to make some observations upon the previous attempts to purchase the islands and upon the principles of policy involved.

It appears that the treaty consists of twelve articles, as compared with the treaty of 1902 which consisted of seven for the purchase of the islands, ratified by the United States but rejected by Denmark. It is said that the most important changes in the new treaty are those to be found in Article 3, enumerating the grants and concessions relating to the islands which the United States assumes and agrees to maintain. The territory ceded is said to be the Islands of St. Thomas, St. John, and St. Croix, together with the adjacent islands and rocks. The summary states further that Denmark conveys all its rights of property of all and every kind or description which it holds in the islands, and all appurtenances thereto. Doubtless the treaty, as is usual in such cases, enumerates the rights, franchises, and privileges, in order that there may be no doubt as to the exact nature and extent of the conveyance, but for present purposes, the above seems to be a sufficient statement.

In the next place, it is said that Article 2 guarantees that the conveyance is free from all encumbrances excepting such as are specifically stated and set forth in the treaty, and it is understood that Article 3 deals with this subject. In the absence of the official text, it is perhaps unwise to attempt to give the contents of this article, as the enumeration may be either inaccurate or fragmentary. Doubtless the reservations from the grant and the obligations assumed by the United States were satisfactory in themselves or were explained to the satisfaction of the Senate, otherwise that cautious body would not have given its advice and consent.

The treaty is also said to contain agreements to the effect that Danish subjects of the islands desiring to retain their citizenship may do so by a declaration made within a year of the exchange of ratifications of the treaty, and that in default thereof, the allegiance of Danish subjects shall be considered as passing with the cession of the islands to the United States; that cases on trial or on appeal in the courts shall be prosecuted to final judgment in accordance with the law and procedure in force at the time of cession; that Danish subjects of the islands shall be accorded the enjoyment of any interests that they may legally have in copyrights and patents at the date of the convention; and that in default of stipulations to the contrary, all treaties, conventions and international agreements to which the two countries are parties and existing at the time of the cession shall be extended and shall apply to the islands. It is to be expected that a treaty of this nature, including as it does a conveyance with reservations, may give rise to differences of opinion, and that the applicability to the islands of treaties, conventions and international agreements may well be the subject of disputes. The treaty, however, foresees such contingencies, and provides, as was to be expected, that differences of opinion regarding the interpretation or application of the treaty which diplomacy has failed to adjust, shall be referred for settlement to the Permanent Court of Arbitration at The Hague.

Assuming that the treaty is in its main lines as above set forth it is in itself proof positive that the United States wants to acquire the islands, because if it were not very desirous to obtain them, it would not offer the tidy sum of \$25,000,000 for their cession.

As a matter of fact, the United States has wanted the islands for a long time, so that in a very young country such as ours, their acquisition may be said to be the traditional policy of the United States. The project seems to have originated with Secretary of State Seward, who, as Senator and before becoming Secretary of State, uttered a famous prediction, not verified indeed during his lifetime, but which at the present day can not be gainsaid. "The Pacific Ocean," he ventured to say, "its shores, its islands, and the vast regions beyond, will become the chief theatre of events in the world's great Hereafter." ¹

On November 18, 1901, the so-called Hay-Pauncefote Treaty was signed between Great Britain and the United States, giving the latter a free hand in the construction of a ship canal between the Atlantic and the Pacific. On November 18, 1903, a treaty was negotiated between

¹ John W. Foster's American Diplomacy in the Orient, 1903, p. 135.

Panama and the United States granting the latter an exclusive right of way through the Isthmus of Panama to construct this ship canal. The canal was opened to the commerce of all countries upon equal terms on May 18, 1914.

It was natural that Mr. Seward should have, as Secretary of State, taken the first steps to acquire an approach to the Pacific and indeed a further foothold upon its waters, which in his opinion, were to become "the chief theatre of events in the world's great Hereafter." He acquired by purchase from Russia, as we all know, the vast domain of Alaska for the bagatelle of \$7,200,000. He attempted to acquire also by purchase the outpost to the Pacific. At a dinner at the French Legation in January, 1865, Mr. Seward, then Secretary of State, expressed to the Danish Chargé d'Affaires the desire of the United States to buy the Danish West Indies. The Chargé was himself opposed to the sale and, under instructions from his government, advised that the negotiations be dropped. In April, President Lincoln was assassinated, and Mr. Seward himself gravely wounded. Upon his recovery, he broached the subject again to the Danish Charge, who stated that, although his government did not desire to sell, it was nevertheless not unwilling to consider the Secretary's propositions. Mr. Seward visited St. Thomas, and convinced himself of the necessity of the purchase. On July 17, 1867, Secretary Seward offered on behalf of the United States the sum of \$5,000,000 for the three Danish Islands of St. Thomas, St. John and Santa Cruz. As Denmark was not desirous of selling, it was natural that the price should be objected to. The Dane asked \$15,000,000 for the three islands, or \$10,000,000 for St. Thomas and St. John, with the option of taking Santa Cruz for an additional \$5,000,000. It was also explained to Mr. Seward that the Danish Parliament would need to consent to the cession and that the consent of the islanders. freely and formally given, would be a further requisite.² Secretary

² Denmark was especially anxious to have the islands vote upon the cession because it hoped that a vote of the inhabitants of Schleswig would, under the terms of Article V of the Treaty of Prague of 1866, result in the reacquisition of the northern part of Schleswig-Holstein, of which it had been dispossessed by Prussia and Austria two years previously. Article V of the treaty provided that "the populations of the North of Schleswig shall be again united with Denmark in the event of their expressing a desire so to be by a vote freely exercised."

But the Dane was doomed to disappointment. This provision was a sop to Napoleon III, the high priest of the plebiscite; it was not a promise made in a treaty with Denmark, but in one to Austria, and it was abrogated with the assent of Austria in the Treaty of Vienna of October 11, 1878.

Seward rejected the price, and balked at the consent of the islanders. But as he was set upon the acquisition, at least of St. John and St. Thomas, he agreed on behalf of the Government to pay \$7,500,000 for them and to concede the question of vote. Denmark agreed to these terms and, therefore, on October 24, 1867, the treaty was signed.

But a lion stood in the way—a very formidable one, which could be neither flattered nor cajoled into approval of the transaction. One Charles Sumner, then Chairman of the Foreign Relations Committee of the Senate, opposed the purchase. And although the islanders voted in favor of the cession, and although Secretary Seward urged favorable action on the part of the Senate, the date named in the treaty for ratification, February 22, 1868, passed without action. The time was extended, and Seward again urged the Senate to act, but Sumner was both deaf and obdurate. He was bitterly opposed to President Johnson, as he was later opposed to President Grant, and during the presidency of the latter Sumner reported the treaty adversely on March 24, 1870 and the Senate declined its advice and consent. The treaty therefore was never ratified. The reason and consequences are thus stated by the late Eugene Schuyler:

Denmark had no particular desire to sell to the United States, but was persuaded to do so. The inhabitants of the islands had already voted to accept the United States as their sovereign. The late Mr. Charles Sumner, then Chairman of the Committee on Foreign Relations of the Senate, who was engaged in a personal quarrel with the administration, simply refused to report back the treaty to the Senate, and he was supported by a sufficient number of his committee and of Senators to enable the matter to be left in this position. It required new negotiations to prolong the term of ratification, and it was with great difficulty that in a subsequent session the treaty was finally brought before the Senate and rejected. As may be imagined, our friendly relations with Denmark were considerably impaired by this method of doing business.

In 1892, negotiations were re-opened during the Secretaryship of State of the Honorable John W. Foster, but in view of a change of administration, no steps were taken. The matter was also considered by Mr. Olney, when Secretary of State, and the Spanish-American War, the acquisition of Porto Rico, and the negotiation of the Hay-Pauncefote Treaty brought the purchase again to the fore because the three islands are, as it were, a prolongation of Porto Rico, which was ceded by Spain to the United States in 1898.

³ Eugene Schuyler's American Diplomacy, 1886, pp. 23–24.

Indeed before the Spanish-American War in 1898, but when it was impending, Senator Lodge urged the purchase of the islands as a naval and coaling station. A bill was accordingly reported on March 31, 1898, authorizing the President to acquire the islands for this purpose, accompanied by a valuable report by Senator Lodge. The bill was not acted upon.

In 1902 the two countries agreed to the purchase and conveyance of the islands for the sum of five million dollars, and on January 24, 1902, a treaty providing for this was signed. It was advised and consented to by the Senate, but Denmark failed this time to ratify it.

Europeans sometimes express displeasure with American methods of ratifying treaties which have been signed by American diplomats duly authorized so to do. But some European countries require the approval of the legislature and it is believed that, after the present unspeakable war, the wings of a monarch or two will be clipped, at least their countries will never be safe over night if irresponsible persons are allowed to make foreign compacts and keep them secret, or indeed, if they be permitted to ratify treaties, although made public, without the advice and consent of an internal body more or less subject to the control of the people, who pay dearly for their rulers' mistakes.

Denmark is one of these countries.

By Article XXIII of the Constitution of 1849, the consent of the Rigsdag was specifically required to treaties of cession. A well informed writer thus states the present practice of Denmark:

It is expressly provided in Article XLVII of the present Constitution that no tax can be imposed, altered or abolished, no loan be assumed, nor any domains belonging to the state be alienated, except in virtue of a law. * * * The treaty signed January 24, 1902, for the cession to the United States of the Danish West Indies, failed because of the refusal of the Rigsdag to give its consent. It appears to be the practice not to ratify treaties that require legislation to render them effective and binding on individual subjects, or that involve an expenditure, until the necessary measures have been adopted by the Rigsdag.

The cession of the islands is again before the Rigsdag, and it is for its members to decide whether they will or will not part with their foothold in the Western World. The price of real estate has gone up since 1902 when five million dollars were unacceptable. If it is a matter of price, five times that sum may be persuasive, for the Old World is not averse to the dollars of the new. But this is not a question of dollars to the

^{*}Crandall's Treaties, Their Making and Enforcement, 2nd ed. 1916, p. 332.

Dane, who did not propose to sell; it was Seward and it is Seward's countrymen who flip the coin in their faces. It is a question of lessening their national domains already lessened by their southern neighbor. The islands are comparatively valueless to Denmark, and they would only be a cause of war with the United States if they passed into other hands without the consent of the United States, and the United States is not inclined to consent for the reasons set forth by Senator Lodge in his report to the Senate from the Foreign Relations Committee:

The arguments in favor of the possession of these islands can be briefly stated, and appear to the undersigned to be unanswerable. So long as these islands are in the market there is always the danger that some European Power may purchase or try to purchase them. This would be an infraction of the Monroe Doctrine, and would at once involve the United States in a very serious difficulty with the European Power which sought possession of the islands. In the interest of peace, it is of great importance that these islands should pass into the hands of the United States and cease to be a possible source of foreign complications, which might easily lead to war.

From a military point of view the value of these islands to the United States can hardly be overestimated. We have always been anxious to have a good naval and coaling station in the West Indies. Important in time of peace, such a station would be essential to our safety in time of war. Successive administrations have labored to secure a West Indian naval station. During the war of the rebellion the United States leased the harbor of St. Nicholas from Hayti for this purpose. General Grant endeavored during his presidency to secure Samana Bay. The effort to obtain the Danish Islands, as has been shown, was begun by Mr. Seward during the presidency of Abraham Lincoln. The fine harbor of St. Thomas fulfills all the required naval and military conditions.

As has been pointed out by Captain Mahan, it is one of the great strategic points in the West Indies. The population of the three islands is only 33,000, of whom nearly 30,000 are negroes, the others being chiefly of English or Danish extraction. There is no possibility of any material increase in the population, and annexation would never involve at any time the troublesome question of Statehood. The Danish Islands could easily be governed as a Territory—could be readily defended from attack, occupy a commanding strategic position, and are of incalculable value to the United States, not only as a part of the national defense, but as removing by their possession a very probable cause of foreign complications.

JAMES BROWN SCOTT.

THE TREATY BETWEEN THE UNITED STATES AND HAITI OF SEPTEMBER 16, 1915

On May 3, 1916, there were exchanged at Washington the ratifications of the treaty signed at Port-au-Prince on September 16, 1915, having for its object, as stated in the preamble, to remedy the present condi-

⁵ Senate Executive Report No. I, 57th Congress, First Session.

tions of the revenues and finances of Haiti, to maintain the tranquility of the Republic and to carry out plans for the economic development and prosperity of the Republic and its people, with which aims and objects the United States expresses itself as being in full sympathy and toward the accomplishment of which it is desirous in all proper ways to contribute. That the misfortunes of the black republic of the Caribbean, to which the preamble to the treaty alludes, are only too true is evidenced by the record of events in that country. The complications with foreign Powers growing out of the inability of the Republic to meet its financial obligations, the repeated revolutionary wars in which the native blood has been shed, in some instances in the most shocking manner; the backward state of the development of the resources of what is acknowledged to be a rich and fertile country and the consequent poverty of its people, are all matters of which the casual observer of current events is aware.

Were these unfortunate conditions the result of some temporary derangement in the domestic affairs of Haiti, there might be some question as to the expediency and propriety of the intervention of the United States. Unfortunately, however, instead of such conditions being of a temporary nature they seem to the sympathetic critic to have existed too long almost as a part, one might say, of the national life of the Republic. The present treaty is not the first attempt on the part of enlightened leaders of Haiti to secure order and peace in their country by appealing The United States, however, to its happier neighbor of the North. adhering strictly to its policy of non-intervention in the domestic affairs of other nations of the Western as well as of the Eastern Hemisphere, has always heretofore turned a deaf ear to such appeals. But the construction of the Panama Canal as a national enterprise of the United States, now regarded as a vital spot in the self-preservation of the nation, has made it essential that conditions should not be permitted to continue to exist which would justify any foreign Power in establishing itself in the vicinity of the canal and thus become a menace to it in case the friendly relations of such a Power with the United States should unfortunately be interrupted. In consequence, a notable change has taken place in the attitude of the United States toward countries bordering on the Caribbean Sea, and in recent years, instead of repelling their advances, the United States has welcomed their appeals for material and moral aid, and it is believed that those countries which have been so fortunate as to receive such aid are better off as the result.

¹ The text of the treaty is printed in the Supplement to this Journal, p. 234.

An examination of the provisions of the treaty will disclose the extent and nature of the new relations between the contracting parties.

Article I pledges the good offices of the United States to aid Haiti in the proper and efficient development of the agricultural, mineral and commercial resources of the latter on a firm and solid basis.

The control of customs houses has always been one of the first objectives of revolutions and the improper use of the funds there collected has too often been the cause of complications with foreign Powers. Article II, therefore, places the responsibility of collecting and applying the customs receipts upon a General Receiver who, with necessary aids and employees, is to be nominated by the President of the United States This provision and thereupon appointed by the President of Haiti. differs in form, but not in substance, from a similar provision in the Receivership Convention between the United States and Santo Domingo, Haiti's neighbor upon the island occupied by the two republics. Under the Dominican Convention the General Receiver and his assistants and employees are appointed directly by the President of the United States instead of being nominated by him for appointment by the President of Santo Domingo. While the result is the same in each case, the procedure adopted in the case of Haiti seems to have more regard for the sovereignty of the Republic.

It is further provided in Article II that a Financial Adviser, similarly nominated and appointed, shall be attached to the Ministry of Finance for the purpose of devising an adequate system of public accounting, aiding in increasing the revenues and adjusting them to the expenses, inquiring into the validity of the debts of the Republic, enlightening both governments with reference to all eventual debts, recommending improved methods of collecting and applying the revenues, and making such other recommendations to the Ministry of Finance as may be deemed necessary for the welfare and prosperity of Haiti, and the latter official is required to lend efficient aid to give effect to all of such proposals and labors. It is further provided in Article IV that the Financial Adviser shall, in co-operation with the Government of Haiti, collate, classify, and make a full statement of all the debts of the Republic, the amounts, character, maturity and condition thereof, and the interest accruing and the sinking fund requisite to their final discharge. No such provisions are found in the convention with Santo Domingo, for the reason that the adjustment and settlement of the debts and claims of Santo Domingo had been previously arranged by a financial adviser designated ġ.,

by the United States, and his work was performed before the convention was concluded and the general results thereof were set out in the preamble.

In order to enable the General Receiver properly to exercise his functions, Article III requires the Government of Haiti to provide by law or appropriate decrees for the payment of all customs duties to the General Receiver, and to extend to him and to the Financial Adviser all needful aid and protection in the execution of the powers conferred and duties imposed upon them, and the United States on its part is to extend like aid and protection. The necessity for such a provision is obvious, for unless the General Receiver has the proper authority and protection guaranteed by both contracting parties, the fulfillment of the terms of the treaty might easily be placed in jeopardy. A similar provision is contained in the Dominican Receivership Convention.

Article V of the treaty prescribes how the funds collected by the General Receiver shall be applied, namely, first, to the salaries and expenses of the Receivership and of the Financial Adviser, which, under Article VI shall not exceed five per cent of the collections and receipts from customs duties unless by agreement of the two Governments; secondly, to the interest and sinking fund of the public debt; thirdly, to the maintenance of a constabulary, referred to in a later article of the treaty; and, finally, the remainder to be paid to the Haitian Government for its current expenses. The Dominican Receivership Convention likewise contains detailed stipulations concerning the application of the funds collected. They necessarily differ in detail to conform to the provisions of the loan contract, the execution of which was the principal object of the Dominican Convention.

The General Receiver is required by Article VII to make monthly reports to the appropriate officer of the Republic of Haiti and to the Department of State of the United States, which reports shall be open to inspection and verification at all times by the appropriate authorities of each of the contracting governments. An identical provision is contained in the Dominican Receivership Convention.

In order to safeguard Haiti against the unwise accumulation of debts, it is provided in Article VIII that Haiti shall not increase its public debt except by previous agreement with the President of the United States. A like provision is found in the Dominican Convention, with the interesting distinction that the previous agreement under the latter convention is made with the Government of the United States instead of with the President of the United States. The change of phraseology is no

doubt due to the desire to remove any question that such an agreement can be made by the President as an executive act as distinct from an agreement by the Government of the United States requiring the advice and consent of the Senate.

Article VIII contains a further provision that the Republic of Haiti shall not contract any debt or assume any financial obligation unless the ordinary revenues of the Republic available for that purpose after defraying the expenses of the government, shall be adequate to pay the interest and provide a sinking fund for the final discharge of such debt. This provision is not taken from the Dominican Receivership Convention, but is modeled after Article II of the Platt Amendment to the Constitution of Cuba and incorporated as Article II in the treaty between the United States and Cuba, concluded May 22, 1903.

By Article IX Haiti further agrees not to modify the customs duties in a manner to reduce the revenues therefrom without a previous agreement with the President of the United States. A similar provision is contained in the Dominican Receivership Convention. This article of the Haitian Treaty contains an additional pledge by the Government of Haiti to co-operate with the Financial Adviser in his recommendations for improvements in collecting and disbursing the revenues and for new sources of needed income.

The foregoing provisions relate to the revenues and finances of the Republic. Article X is designed to carry out the second object of the treaty, namely, the maintenance of the tranquility of the Republic. Under this article the Haitian Government, in order to preserve domestic peace, secure individual rights and the observance of the present treaty, obligates itself to create without delay an efficient constabulary, both urban and rural. This constabulary is to be composed of native Haitians, organized and officered by Americans appointed by the President of Haiti upon the nomination of the President of the United States. Haiti agrees to clothe the American officers with proper and necessary authority and to uphold them in the performance of their functions. are to be replaced by Haitians who are found to be qualified after examination conducted under the direction of a board to be selected by the senior American officer and in the presence of a representative of Haiti. In order to prevent factional strife and disturbances, it is specifically provided in this article that the constabulary shall have, under the direction of the Haitian Government, supervision and control of arms and ammunition, military supplies and traffic therein throughout the country.

Article XI of the treaty follows the Platt Amendment to the Constitution of Cuba (Article I) by providing that Haiti shall not surrender any of the territory of the Republic by sale, lease, or otherwise, or jurisdiction over such territory, to any foreign government or Power, nor enter into any treaty or contract with any foreign Power or Powers that will impair or tend to impair the independence of Haiti.

To take care of the foreign claims against Haiti, Article XII provides that that government shall execute with the United States a protocol for the settlement of such claims by arbitration or otherwise. It would appear from the wording of this article that the United States is to be a party to such settlement.

The final object of the treaty, namely, the economic development of the Republic and the prosperity of its people, is taken care of in Article XIII, which provides for the appointment of an engineer or engineers by the President of Haiti upon the nomination of the President of the United States for the execution of such measures as, in the opinion of the two contracting parties, may be necessary for the sanitation and public improvement of the Republic of Haiti.

There then follows in Article XIV, first, a general provision that the high contracting parties shall take such steps as may be necessary to insure the complete attainment of any of the objects comprehended in the treaty, and, secondly, another provision taken from the Platt Amendment to the Constitution of Cuba whereby it is agreed that the United States shall, should the necessity arise, lend its aid for the preservation of Haitian independence and the maintenance of a government adequate for the protection of life, property and individual liberty (See Article III of the Platt Amendment).²

Article XV contains the usual provisions concerning ratifications, and Article XVI provides that the treaty shall remain in force for ten years and for another ten years if, for specific reasons presented by either of the high contracting parties, the purpose of the treaty has not been fully accomplished.

The treaty will thus be seen to be a composite of provisions taken from conventions which have previously been concluded by the United States and tested by actual experience, namely, the Platt Amendment to the Constitution of Cuba and the Dominican Receivership Convention. The provisions concerning the Financial Adviser and the constabulary,

² For an interpretation by Mr. Root of this expression as used in the Platt Amendment, see this JOURNAL, Volume 8, p. 887.

not found in either of the documents mentioned, follow in many respects the informal agreement between the United States and Liberia, the customs of which are now being administered by a receivership headed by an American official designated by the President of the United States and appointed by the President of Liberia.

The treaty has been popularly referred to as a protectorate treaty. While protection is afforded under its terms in all needed respects, the treaty, like its predecessors, the Dominican Receivership Convention and the Platt Amendment, lacks one essential element of a real protectorate, namely, the conduct of the foreign relations of the protected country by the protecting country. The condition created by the treaty is more analogous technically to the spheres of influence claimed by European Powers in certain parts of the world, but with this very important distinction, that the European spheres of influence are primarily maintained for the commercial advantage of and exploitation by the dominant state, while in the case of Haiti and other countries similarly situated, the motives underlying the arrangements are the domestic security, economic development and national prosperity of the Caribbean countries and the self-defense of the United States.

GEORGE A. FINCH.

THE EXECUTION OF CAPTAIN FRYATT

On June 23, 1916, the steamer *Brussels*, belonging to the Great Eastern Railway, was captured by German warships. The captain of the Brussels, one Charles Fryatt by name, a British subject, was taken to Zeebrugge in Belgium, tried by a German court martial at Bruges on July 27th, condemned to death by shooting, and executed the afternoon of the same day, for having attempted, on March 20, 1915, to ram the German submarine U-33.

The facts surrounding the capture, trial and execution of Captain Fryatt and the justification for the action of the German authorities in the premises are contained in what purport to be official statements of the German Government, the material portions of which are quoted without comment. On July 28th, the day after the execution, a despatch, said to be a German communique, appeared in the press, which reads in part as follows:

The accused was condemned to death because, although he was not a member of a combatant force, he made an attempt on the afternoon of March 20, 1915, to ram the

German submarine U-33 near the Maas lightship. The accused, as well as the first officer and the chief engineer of the steamer, received at the time from the British Admiralty a gold watch as a reward of his brave conduct on that occasion, and his action was mentioned with praise in the House of Commons.

On the occasion in question, disregarding the U-boat's signal to stop and show his national flag, he turned at a critical moment at high speed on the submarine, which escaped the steamer by a few meters only by immediately diving. He confessed that in so doing he had acted in accordance with the instructions of the Admiralty.

One of the many nefarious franc-tireur proceedings of the British merchant marine against our war vessels has thus found a belated but merited expiation.

On the 10th of August, the German Government issued a further statement justifying Captain Fryatt's execution, apparently in reply to criticism of the act on the part of the British Government and press. This statement follows:

It is only too intelligible that the English Government attempts to justify Captain Fryatt's action, for it is itself in a high degree a fellow-culprit. Captain Fryatt, acting as he did, acted only on the advice of his government.

The British Government's statement intentionally misleads the public. Captain Fryatt did not attempt to forestall an under-water attack, without warning, by the submarine. The U-boat was above water, and signaled to him when above water to stop, according to the international code of naval warfare. Therefore, he did not merely attempt to save the lives of his crew, because they were not endangered. Moreover, on March 28, 1915, Captain Fryatt allowed the submarine, which was approaching his ship for the purposes of examination, to draw up close, so as to ram her suddenly and unexpectedly, his object being to destroy her, and so gain the reward offered by the British Government. This act was not an act of self-defense, but a cunning attack by hired assassins. Captain Fryatt boasted of his action, though happily he failed to attain his object. This was brought home to him during the trial by witnesses from the crew of the submarine in question, whose evidence was against him. The British Parliament believed he had succeeded and praised his conduct, and the British Government rewarded him.

The German War Tribunal sentenced him to death because he had performed an act of war against the German sea forces, although he did not belong to the armed forces of his country. He was not deliberately shot in cold blood without due consideration, as the British Government asserts, but he was shot as a franc-tireur, after calm consideration and thorough investigation. As martial law on land protects the soldiery against assassination, by threatening the offender with the penalty of death, so it protects the members of the sea forces against assassination at sea. Germany will continue to use this law of warfare in order to save her submarine crews from becoming the victims of france-tireurs at sea.²

It is not the purpose of the present comment to discuss the facts of the case, or to sift and weigh conflicting evidence, but, accepting the

¹ New York Times Current History, September, 1916, p. 1017. ² Ibid., p. 1019.

German statement of the facts of the case to be correct for present purposes, to refer to some authorities which may seem to throw light upon the principle of law supposed to be involved.

The question involved in the case appears to be whether a belligerent merchant vessel has the right to resist visit and search by an armed vessel of the enemy, or whether it is the duty of a belligerent merchantman to allow visit and search without resistance. In approaching this question, a distinction must be drawn between the right and duty of a neutral ship, on the one hand, and of a belligerent ship on the other. It is law and practice, for which no authority need be cited, that a neutral ship must allow visit and search, and that if it attempts to resist, or if it does resist, it subjects itself to capture. The reason for this is that a neutral merchantman is not liable to capture merely because it is a neutral vessel met upon the high seas, but only if it is engaged in an act or transaction which under international law allows a belligerent to capture it. Under law and practice, innocent and unoffending private property of the enemy is liable to capture upon the high seas, and visit and search, which in the case of the neutral merchantman is in the nature of inquiry, is, in the case of the enemy merchantman, an attack, a hostile act culminating in capture. As the steamer Brussels was an enemy, not a neutral, merchantman, this phase of the subject will not be pursued further, but it has been mentioned to clear up a confusion of ideas which seems to exist on this subject.

In the case of the Nereide (9 Cranch, 388), decided by the Supreme Court of the United States in 1815, and involving the question whether a neutral had a right to place his goods on an armed belligerent merchantman, and whether the goods were forfeited by a resistance of the vessel in which the owner of the goods took no part, Chief Justice Marshall considered in a broad and masterly way the status of a belligerent merchantman, armed or unarmed, and its right and duty to resist capture. The Chief Justice held that the neutral could use indiscriminately an armed or an unarmed belligerent vessel, and that, in so far as the present question was concerned, there was no difference between either. At least he failed to discover or to state it. "It is difficult," he said, "to perceive in this argument anything which does not also apply to an unarmed vessel. In both instances it is the right and the duty of the carrier to avoid capture and to prevent search. There is no difference except in the degree of capacity to carry this duty into effect." And in the case of the Atalanta (3 Wheaton, 409), decided in 1818, which was in the nature of an appeal from the decision of the Supreme Court in the case of the *Nereide*, Mr. Justice Johnson, distinguishing between the case of a neutral and a belligerent vessel, thus stated what is believed to be the law as well as the rule of reason within the compass of a single sentence: "Resistance, either real or constructive, by a neutral carrier, is, with a view to the law of nations, unlawful; but not so, with the hostile carrier; she had a right to resist, and in her case, therefore, there is no offense committed, to communicate a taint to her cargo."

Within a twelvemonth of the outbreak of the present miserable and insensate war, the question of the right of a private vessel of the enemy to defend itself was raised and discussed at the meeting of the Institute of International Law held at Oxford in the month of August, 1913. The meeting was said to be the largest and best attended which the Institute had held, and there were publicists in attendance unofficially representing fifteen countries, among them Great Britain, France, Germany, Austria-Hungary, Italy, and the United States. The question was raised and discussed. Exception was taken to the third paragraph of Article 13 of the proposed Manual of Maritime Warfare, then under consideration, and which, adopted by the Institute at the Oxford session, is therefore called the Oxford Manual of Naval War. The article in question is Article 12 of the Manual as adopted and paragraph 3 of the draft is the third paragraph of Article 12 as adopted. Article 12 reads:

Article 12. Privateering, private vessels, public vessels not war-ships. Privateering is forbidden.

Apart from the conditions laid down in Articles 3 and following, neither public nor private vessels, nor their personnel, may commit acts of hostility against the enemy. Both may, however, use force to defend themselves against the attack of an enemy vessel.³

When Article 13 of the proposed draft was taken up, Mr. Triepel, professor of international law in the University of Berlin, moved the suppression of the third paragraph thereof recognizing the right of private belligerent vessels to defend themselves against attack. He said that "a merchantman never has the right to defend itself even if the attack of which it is the object is unlawful. It is not for the vessel to decide this question for itself." Mr. Oppenheim, professor of international law in the University of Cambridge, moved on the contrary that

Resolutions of the Institute of International Law, Carnegie Endowment, 1916, p. 177.

"the Institute maintain the principle based on custom which allows a private vessel to defend itself."

Mr. Edward Rolin-Jaequemyns, taking part in a later stage of the discussion, expressed the opinion that

Sufficient account was not taken of the difference between the rules of belligerency and the rules of neutrality. Doubtless the neutral which resists loses the benefit of its neutral status, but in the Manual only the rules of belligerency should be considered. The case considered in the third paragraph of Article 13 is that of a vessel representing in itself a considerable force. The commission did not consider it possible to admit that a very large merchantman, manifestly superior in force to a little war vessel, should necessarily submit to the injunctions of the latter. If it should succumb in the struggle, it could be captured, but it could not be considered as having violated the rules of the law of nations. Such is the exact sense which the commission has ascribed to Article 13, paragraph 3.

Mr. Triepel thereupon declared that he would be disposed to retain the third paragraph of Article 13, on the condition that there be added to it the words "visit is not to be considered as an attack!"

The late Professor Fiore, of Italy, considered the question as very simple. "Force," he said, "ought to be met by force, no matter how this force is manifested."

Lord Reay, of Great Britain, in support of Fiore's view, asked that the Institute vote Article 13 as it was drafted in the project submitted by the commission. He stated that the lawfulness of the permission given by the Admiralty to certain large vessels to carry four cannon had been contested even by intelligent persons. The text of the third paragraph of Article 13 would dissipate all objections on this point. Lord Reay therefore asked the Institute to assert for merchant vessels the right of legitimate defense in the conditions stated.

Mr. Clunet, of France, also asked the Institute to admit the right of legitimate defense, saying that an enemy vessel which is subject to capture could not be asked to court capture. And he also stated that between belligerents, international law is not violated by the exercise of the right of legitimate defense inserted in the third paragraph of Article 13.

In the end, after all members and associates had taken part in the discussion who cared to do so, as the minutes expressly state, "Article 13 in the form in which it was proposed by the commission was adopted by the institute by a large majority."

It is the rule of the Institute for each member or associate to answer

to his name in the roll call and to vote for or against the project as a whole after the different articles have been discussed and accepted one by one. The project containing the right of a merchant vessel to defend itself was adopted after five days' consideration by the vote of 53 of the 54 members, including therein Professor Triepel. The 54th member, Mr. Anzilotti, of Italy, abstained from voting because he was not in favor of some of the principles contained in the Manual and because he did not care to approve the resolutions adopted at the Christiania session, in which he did not take part.

Therefore, as late as August, 1913, the overwhelming consensus of living publicists was in favor of the right on the part of a belligerent merchant vessel to defend itself from attack. It should also be said in this connection that at the same session of the Institute, and in connection with this same article and paragraph, a proposition was made and voted down that a belligerent merchantman was not justified in considering the signal or order of an enemy war vessel to stop as an attack justifying the use of force on the part of the belligerent merchantman.⁴

In this connection, it is of very great importance to quote a passage from a German publicist who has made a specialty of the law of maritime warfare, who was aware of the discussion which took place in the Institute of International Law concerning the right of an enemy merchant vessel to use force to defend itself against attack, and who was also familiar with the views expressed by Professor Oppenheim in favor of the right, and by Professor Triepel against the right, in articles which appeared in the Zeitschrift für Völkerrecht in 1914, of which periodical Dr. Hans Webberg, for it is to him reference is made, was then an associate editor. It is also to be borne in mind that Dr. Wehberg's work, to which reference is made, is entitled The Law of Maritime Warfare, that it was published in 1915, and that in the text it considers events of the war in so far as they concern maritime warfare down to the middle of November, 1914. In a section of this work dealing with resistance to visit, pages 282-288, Dr. Wehberg considers the very subject in question. In the introductory passages, he calls attention to the differences between the laws of land and maritime warfare, and states the confusion which results if they be not kept separate and distinct. He illustrates this point by saying that it would be as unjustifiable to say that armed resistance by noncombatants was excluded in maritime warfare because it was not permitted in land warfare, as it would be to say that private Annuaire de l'Institut de Droit International, 1913, Vol. 26, pp. 516-521, 607-609.

property of the enemy could not be captured on the high seas because private property of the enemy on land was not subject to capture. While admitting that warfare is only permitted on land between organized forces of the enemy, he immediately adds that the question of armed resistance of enemy merchantmen has not been the subject of discussion among modern nations. After having made these introductory observations rejecting the applicability of the principles of land warfare to naval warfare, and reprobating the tendency of theorists to decide special cases by general principles to which they do not apply, Dr. Wehberg thus continues:

The resistance of enemy merchant ships to capture would be then only inadmissible if a rule against this had found common recognition. But in truth, no single example can be produced from international precedents in which the states have held resistance as illegal. Rather, in the celebrated decision of Lord Stowell in the case of the Catharina Elizabeth, resistance was declared permissible, and Article 10 of the American Naval War Code takes the same viewpoint. Also by far the greater number of authors and the Institute of International Law share this view.

Also de lege ferenda the prevailing view is to be advocated. Should great merchant ships worth millions allow themselves to be taken by smaller ships only because the latter comply with the requirements of a so-called warship? * * *

The enemy merchant ship has then the right of defense against enemy attack, and this right it can exercise against visit; for this is indeed the first act of capture. The attacked merchant ship can indeed itself seize the overpowered warship as a prize.

Dr. Georg Schramm, Adviser to the German Admiralty, and Professor Heinrich Triepel, are the chief, if not the only, German publicists who have denied the right of the belligerent merchant ship to arm itself against attack and to defend itself if attacked. In his work entitled Das Prisenrecht in seiner Neuesten Gestalt, which may be translated as "Prize Law in its Newest or Latest Form," Dr. Schramm says:

A merchantman has no right of self-defense against the lawful exercise of the right of stoppage, search, and seizure. Self-defense is to be understood as a defense against an *unlawful* interference with lawful property. But in exercising the aforementioned rights the belligerent keeps within the sphere of his recognized rights, and therefore does not act contrary to law. The merchantman must therefore tolerate this interference of the belligerent; a defense, that is, an action for the purpose of warding him off, on the part of the merchantman, would, on the contrary, constitute an encroachment upon the sphere of rights of the belligerent. This applies in general to both neutral and hostile merchantmen. The latter have no exceptional status. They likewise have no right of self-defense. The contrary view, which has been held even in

⁶ Handbuch des Völkerrechts, Vol. IV, pts. 1 and 2 (Das Seekriegsrecht), pp. 284-285.

modern literature, especially English and American, and which would attribute to the crew of a hostile merchantman the status of combatants with respect to the enemy warship, is based not only on an absolute misjudgment of the modern idea of the legal regulation of warfare as an armed conflict between nations, but also on a denial of the legal maxim which, in land and naval war, grants only to the organized forces of the nations the authority to employ armed force in both attack and defense. This view is moreover illogical; for if hostile merchantmen, which owing to their very status as hostile ships are with few exceptions subject to capture and confiscation, were to be granted a right of resistance, then such authority would with all the more right have to be conceded to neutral ships, which are allowed on general principles to travel about freely even in naval war and are subject to seizure only under certain conditions (as in case of breach of blockade, the conveyance of contraband, etc...) as well as, under certain circumstances (not always) to confiscation. And nevertheless even those authors who would concede an exceptional status to hostile merchantmen recognize the fact of forcible resistance on the part of neutral merchantmen as a ground justifying the confiscation of the ship. It is worthy of remark that this doctrine that hostile merchantmen possess a right of defense as against the lawful acts of a warship of the enemy, while held only sporadically in the literature on the subject and lacking a legal basis from the standpoint of the modern law of war, has yet, here and there been recognized in the prize law provisions of individual nations, For instance, Article 209 of the Italian Codice per la marina mercantile of October 24, 1877, contains the following provision: "Merchantmen when attacked by ships, even by warships, may defend themselves and capture them; they may also go to the defense of any other national or allied ships which are being attacked and join with them to capture prizes." Article 210 of the said Codice further states that in case a hostile ship "seen from the shore of the state" were to attempt to capture a prize, any national would be entitled to arm a ship (di formare armamenti), and go to the assistance of the merchantman attacked. Article 15 of the Russian Prize Regulations of March 27, 1895, is also pertinent to the subject; it declares: "This right (that is, the right to stop, search and seize merchantmen and their cargoes) is conceded to merchantmen in the following cases only: (1) in case of attack by allied or suspected vessels, and (2) when it is necessary to go to the assistance of Russian or neutral vessels attacked by the enemy." A similar process of reasoning prompted the provision of Article 10, paragraph 2 of the Naval War Code which recognizes the claim to the treatment as prisoners of war on the part of the crew of hostile merchantmen who are captured while engaged in self-defense or who have resisted attack in order to protect the ship entrusted to them. In so far as these provisions are not directed to the warding off of piratical attacks of merchantmen, they are without any legal foundation. (Pages 308-310.)

To these contentions of Dr. Schramm, Professer Oppenheim, of the University of Cambridge, has replied in a German article entitled "The Position of Enemy Merchant Ships in Maritime Warfare," contributed to the Zeitschrift für Völkerrechts, Vol. 8, pp. 154–169. Professor A. Pierce Higgins considers Professor Oppenheim's reply to be unanswerable, but Professor Triepel does not share this view, and has himself

made a reply entitled "Resistance against Seizure of Enemy Merchant Ships," likewise contributed to the same German journal of international law. An article by Professor Higgins himself, entitled "Armed Merchant Ships," is printed in this Journal for October, 1914 (Vol. 8), p. 705.

Professor Triepel concedes that the right of an enemy merchant ship to defend itself against capture is admitted with scarcely a dissenting voice by the publicists of different nationalities, including those of Germany, and he also concedes that the practice of nations in so far as a practice exists is in favor of the right. He states, and properly, that the consensus of publicists does not make a rule of international law, and he claims and exercises the right of examining the question on principle. He quotes Professor Oppenheim's statement that the publicists are in favor of the right of a merchant ship to defend itself, and adds:

He is right. The literature is upon his side. Not only in the English and the Anglo-American works on international law and especially on maritime law, but also in the French, Belgian, Italian, and Swedish science, the right of self-defense as far as I can see is generally acknowledged. Only in very isolated cases a doubt is ventured. The majority of the later German writers maintain silence on the question. In the older writers, the English doctrine is followed.

And in the footnotes to the passage quoted, he enumerates the authorities which overwhelmingly sustain the right. In the matter of practice, Professor Triepel claims that the only adjudged cases are to be found in English and American courts. These are The Catherina Elizabeth (5 C. Rob. 232), decided in 1804, in which Sir William Scott, later Lord Stowell, after saying that a neutral could not resist visit and search, went on to say "with an enemy master, the case is very different. No duty is violated by such an act on his part—lupum auribus teneo—and if he can withdraw himself, he has a right so to do." The other is the case of The Nereide, from which the passage has already been quoted in which Chief Justice Marshall holds that it is both the right and the duty of an enemy merchantman to defend itself from capture.

To break the force of these precedents admitting the right of self-defense, and they are the only adjudged cases apparently on the subject, Professor Triepel insists that neither the decision of a national court nor of a prize court in a particular country binds a foreign country. This

⁶ Zeitschrift für Völkerrecht, 1914 (Vol. VIII), p. 391.

contention may be admitted. It is, however, equally clear that the views of Dr. Schramm and of Professor Triepel do not bind a foreign country, and a decision of the Supreme Court of the United States can be quoted, if it were needed, to the effect that even the views of Germany or of any other nation do not and can not of themselves make international law.⁷

The truth seems to be that the change in maritime warfare in which merchant vessels would have no chance to protect themselves against heavily-armed cruisers, and the abolition of privateering by the Declaration of Paris, caused the merchantmen, armed or unarmed, to be lost sight of. The practice of many nations since the Declaration of Paris in granting subventions to shipbuilders on condition that merchant vessels be built in such a way that they can be converted into auxiliary cruisers in case of war, the actual conversion of some such vessels by Russia during the war with Japan, and the claim and exercise by such vessels of belligerent rights, called attention again to the merchantman as of possible use in naval warfare.

The speech of Mr. Winston Churchill in the House of Commons, March 26, 1913, at which time he was First Lord of the Admiralty, announcing that Great Britain had adopted the policy of placing armament upon merchant vessels in order that they might defend themselves against attack, led to a reconsideration in certain quarters, especially in Germany, of the whole subject. Those who deny the right of the merchant vessel to defend itself insist that by the abolition of privateering warfare on the high seas has become a contest between state and state, in which only duly commissioned public vessels can take part. They do not deny that a merchant vessel may be converted into a man-of-war. Indeed, the right so to do is in their opinion not open to question, and they insist that merchant vessels can be converted into warships, not merely in the ports of the country whose flag it flies, but also upon the

⁷ See the decision of Chief Justice Marshall in the case of *The Antelope*, (10 Wheaton, 66, 122), decided in 1825, in which he held: "No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all, by the consent of all, can be divested only by consent; and this [slave] trade, in which all have participated, must remain lawful to those who can not be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose governments have not forbidden it."

high seas. They maintain, however, that until the merchant vessel has been converted into a public vessel by an act of the government, manned and officered by the naval authorities and subordinated to naval discipline, the vessel has not legally changed its commercial character and that it has not acquired the right to use force. This is to appeal to the 7th Convention of the Second Hague Conference relating to the Conversion of Merchant Ships into War Ships, the only international treaty dealing with the subject, of which the articles in point follow:

A merchant ship converted into a war-ship can not have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of the Power whose flag it flies. (Article 1.)

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality. (Article 2.)

The commander must be in the service of the state and duly commissioned by the competent authorities. His name must figure on the list of the officers of the fighting fleet. (Article 3.)

The crew must be subject to military discipline. (Article 4.)

Every merchant ship converted into a war-ship must observe in its operations the laws and customs of war. (Article 5.)

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships. (Article 6.) *

But the 7th article of this convention provides that its terms "do not apply except between contracting Powers, and then only if all the belligerents are parties to the convention." Of the belligerents in the present war, the following have not ratified it: Bulgaria, Italy, Montenegro, Serbia. Because of this state of facts, the convention has never bound any of the belligerents, because it was not ratified by Serbia, and the present war began on the 28th day of July, 1914, by the declaration of war by Austria-Hungary against Serbia.

It therefore appears that there is no international agreement that only merchant vessels which have been converted into war vessels according to the terms of Convention No. 7 are to be allowed the use of force, especially in self-defense. In the absence of an international agreement to this effect, the rule of law, not created but declared by Lord Stowell and Chief Justice Marshall as the practice of nations, obtains, and if it is true that "no nation can prescribe a rule for others," and "none can make a law of nations," it follows that the attempt of Germany to deprive belligerent merchant vessels of the right to resist an

⁸ The Hague Conventions and Declarations of 1899 and 1907, Carnegie Endowment, 1915, p. 146.

attack of the enemy does not change the law of nations which permits this right; and if the municipal law of a country has no extra-territorial effect, the adoption by Germany of such a rule can not deprive Great Britain of the right to order its merchant vessels to resist an attempt to capture them.

It is to be remembered that in the German communiqué of July 28th it is stated that Captain Fryatt confessed that in attempting to ram the German submarine *U-33* "he had acted in accordance with the instructions of the Admiralty." It may well be that a German submarine is a very frail craft and that it may be run down by a steamer which attacks it and rams it. But if the belligerent merchant vessel has the right to resist capture, it has the right to use an amount of force which may result in the destruction of the enemy vessel which seeks to attack it.

It is difficult to reconcile the action of the German authorities in executing Captain Fryatt with the appendix to the prize code of the German Empire, which was in force on March 28, 1915, when Captain Fryatt attempted to ram the German submarine *U-33*. The appendix referred to is an order dated June 22, 1914, instructing commanders "in respect of their conduct when encountering armed merchant vessels during war," and annexed to the prize code drafted in 1909, and proclaimed as the law of the empire on August 3, 1914, upon the outbreak of the war. Article 2 of this appendix reads as follows:

If an armed enemy merchant vessel offers armed resistance against measures taken under the law of prize, such resistance is to be overcome with all means available. The enemy government bears all responsibility for any damages to the vessel, cargo, and passengers. The crew are to be taken as prisoners of war. The passengers are to be left to go free, unless it appears that they participated in the resistance. In the latter case they may be proceeded against under extraordinary martial law.

Now, if the *Brussels* had been armed, and had attempted to sink the submarine boat, Captain Fryatt and his crew would have been made prisoners of war and treated as such. This is an admission that merchant vessels may be armed and that their resistance is not illegal but subjects the crew to the treatment accorded to prisoners of war. This article is declaratory not amendatory of international law. It does not attempt to change, nor could it legally change, the law of nations as evidenced by the practice of nations. It left untouched the right of

⁹ Huberich & King's edition of the German Prize Code as in force July 1, 1915, page 75.

belligerent merchant vessels to defend themselves against attack, whether armed or unarmed, by means of guns or by ramming the enemy vessel if the master of the merchantman is skilful enough so to do. The article does not state the manner in which the vessel is to be armed and it is no strained construction to consider the merchantman in its entirety as an arm in so far as the submarine is concerned. Ramming is an effective method of defense against a submarine and the fact that the submarine is a frail thing and cannot stand this kind of warfare is its misfortune, not the merchantman's fault. Assuredly an unarmed merchantman is not so dangerous as an armed vessel, and the presence or absence of a gun or two on board should not and does not in enlightened practice confer or withdraw the right of a belligerent merchantman to resist capture. But, in any event, there is no international agreement changing the practice of nations which permits merchant vessels to defend themselves from attack and capture by armed vessels of the enemy; and the municipal ordinance of one country can not change the law of any other country, not to speak of all countries.

If the views above expressed are correct that there is nothing in the law nor in the practice of nations which prevents a belligerent merchant vessel from defending itself from attack and capture, the execution of Captain Fryatt appears to have been without warrant in international law and illegal, whatever it may have been according to the municipal ordinances of Germany.

JAMES BROWN SCOTT.

THE ESCAPE OF PAROLED MEMBERS OF THE CREWS OF INTERNED CRUISERS IN THE UNITED STATES

The third number of the Diplomatic Correspondence with Belligerent Governments relating to Neutral Rights and Duties, issued by the Department of State, contains the correspondence concerning the escape of officers and men from German ships interned in the United States. In view of the interest in the question, and in view also of the responsibilities which the United States would assume if it did not take measures to prevent the crews of interned ships from escaping, it is advisable to state the facts and circumstances of the escape and the attitude of the United States in the premises as set forth in the diplomatic correspondence relating to this matter between Germany and the United States.

No government can under international law allow its ports to become

the basis of hostile operations; and there is an agreement and a practice of nations to the effect that belligerent vessels of war shall not be allowed to fit themselves in neutral ports for hostile operations; that they shall not be permitted to remain more than twenty-four hours in a neutral port, unless it be necessary to fit themselves to go to sea and not to fit themselves to give battle. And it is regarded as a duty of each and every neutral nation either to compel the belligerent warship to leave neutral waters within twenty-four hours after arrival, supposing such period has not been extended in case of repairs, or to intern the vessel and crew, so that neither it nor its crew may take further part in the war in progress. The practice of nations is laid down in Article 24 of the Convention Concerning the Rights and Duties of Neutral Powers in Naval War, which may be regarded as declaratory of international law. Article 24 is therefore quoted:

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

From time to time German war vessels, usually converted merchantmen or auxiliary cruisers, have put into American ports, and have submitted to internment rather than to put out upon the high seas, which are under the control of their enemy, Great Britain; and, as stated in the following passage from Secretary Lansing's note to the German Ambassador, dated November 16, 1915, certain paroled officers and men have escaped from these vessels:

On October 10, 1915, six officers, Vizesteuermenn Heinrich Hoffman, Heinrich Ruedebusch, Wilhelm Forstreuter, Erich Biermann, and Ing. Aspirants Julius Lustfeld and Walter Fisher, of the German cruiser *Kronprinz Wilhelm*, interned at Norfolk, Virginia, received permission to go ashore and to return by eight a. m., October 11th. These officers have not been seen since, and are supposed to have departed on board the yacht *Eclipse*, which was purchased by Vizesteuermann Hoffman shortly before their departure.

On September 29, 1915, Marine Stabsarzt, Dr. Keuger Kroneck, and Lieutenant zur See Koch, of the German cruiser *Prinz Eitel Friedrich*, were given permission to go on a visit to New York City and Niagara Falls and to return to their ship on October 16th. These officers, however, have not returned to their ship and were seen in the Pennsylvania Railroad Station, New York City, on October 17th.

The German cruiser *Prinz Eitel Friedrich* arrived in American jurisdiction on March 10, 1915, and was interned on April 9th, 1915. On March 10th, the commanding officer was directed to allow none of his officers or crew on shore for the present. The commander acknowledged the receipt of this notice and stated that he would act accordingly. On March 12th the commanding officer asked permission for his officers and men to go ashore, if they did not leave Newport News. On March 17, 1915, two days prior to the granting of the commander's request, the executive officer, i. e. the second officer in command, Otto Brauer, left the ship. The Department now has reliable information that Brauer has returned to Germany and is on duty on board the Cruiser *Lutzov* at Danzig.

Doctor Nolte was granted leave of absence from the *Prinz Bitel Friedrich* to go to Newport News and Old Point Comfort, Virginia, and return on May 13th last. Doctor Nolte has not, as yet, returned to his ship.

On or about June 14, 1915, Herman Deike, engineer officer of the *Locksun*, interned at Honolulu, left his ship and is yet absent in violation of his parole.

In view of the apparent disregard of these members of the complements of the interned vessels at Norfolk for their word of honor while on parole, the Navy Department, on October 14, 1915, was under the necessity of ordering that no officers or men be allowed to leave the ships until the absent officers and seamen had returned.

Notwithstanding this order, on October 15, 1915, two members of the crew of the Kronprinz Wilhelm attempted to board the Dutch steamship Maar Tensdyk at Newport News, in an endeavor to escape. Seaman Sturm was apprehended and his companion, Seaman Kasper, returned to the Kronprinz Wilhelm of his own volition. Also, on November 12, 1915, fireman Thiery was found absent from the Prinz Eitel Friedrich at muster, having escaped from his ship.

Mr. Lansing next called attention to the fact that "the incidents related have occurred notwithstanding the fact that at the time of the internment of these vessels each commanding officer gave a pledge for himself, officers, and crews not to commit any unneutral acts and not to leave limits prescribed in paroles." Mr. Lansing thereupon stated and very properly that this action on the part of members of the interned personnel was contrary to express instructions and the standard of honorable conduct to be expected under the circumstances, and that the United States would expect not merely a discontinuance of this practice, but the return of the members who had violated their paroles to the jurisdiction of the United States. Secretary Lansing also informed the German Ambassador that in consequence of these escapes, the United States had been forced to discontinue the custom of paroling interned

officers and men on their honor and to restrict the very liberal privileges previously allowed. Secretary Lansing further invited the attention of the German Ambassador to the fact that during the Russo-Japanese War, three Russian officers escaped from the Russian ship *Lena*, which was interned in the port of San Francisco, and that the Russian Government, when informed of the fact, "immediately caused the escaped officers to return to American jurisdiction, where they were interned for the remainder of the war." After further stating that the United States considered the action of Russia "as in accord with the best practice of nations and applicable to the cases" in question, Secretary Lansing intimated that Germany should follow the Russian precedent, and give the necessary instructions "that Otto Brauer and any others of the men mentioned who may now be within German jurisdiction, or who may hereafter come within such jurisdiction, be promptly returned to this country for internment with their respective ships."

On February 16, 1916, the German Foreign Office replied to a communication of the American Ambassador to Germany, in which Under-Secretary of State Zimmermann expressed regret that members of the interned vessels had escaped and suggested that the terms of the parole were not such as to bind the honor of the members to remain within American jurisdiction. Thus, he said:

According to the investigations made by the latter [the German Naval Administration], the commanders of the two auxiliary cruisers, unfortunately, did not sufficiently instruct their officers and crews regarding the significance of the "assurance" (Versicherung) given by them. Moreover, the expression "pledge" chosen by Rear Admiral Beatty in his letter to the commanders does not conform absolutely to the idea of the "word of honor" (Ehrenwort). The persons who escaped, therefore, were obviously convinced that they would not, through their act, render themselves guilty of a breach of their word of honor.

The German Under-Secretary stated that only Stabsarzt Krüger-Kroneck had so far returned to Germany and that he would be instructed to return to his vessel "as soon as the American Government has obtained safe-conduct for him from the hostile governments." The Under-Secretary said in this connection that:

The German Government states expressly that by the return on board his ship of Stabsarzt Krüger-Kroneck the question is not touched whether, after his return, his release later on may not have to be granted in accordance with the Hague Convention regarding the application of the rules of the Geneva Convention to naval warfare.

In a cable dated March 9, 1916, to the American Ambassador to Germany, Secretary Lansing rejected the German contentions, stating that the officers who had taken refuge in American jurisdiction agreed to be interned and that "therefore, the obligation of remaining with their vessels rested wholly with the officers of those vessels."

As this question is one of substance, not of form, it seems well to quote what secretary Lansing has to say in reply to the German contention regarding the point of honor, and also to quote Secretary Lansing's rejection of the German claim to the benefits of the provisions of the Geneva Convention for a German officer who had broken his parole. On the first point, Secretary Lansing said:

That these officers are not cognizant of the principles of international law can not be assumed. Promises were given in writing by the captains of the two vessels for themselves, the officers, and the crews of the vessels that they would in no way violate American neutrality during their internment. It seems to be indicated by the answer of the German Naval Administration that it does not appreciate fully the seriousness of the obligation assumed thus by their naval representatives on the two vessels in question to remain within the assigned limits with the minimum of troubleto the government of the country in which they are interned. They were considered as guests of the American Government and not as prisoners of war, and as such guests. permission was given them to leave the navy yard and to visit on leave any part of the United States. Lieutenant Zur see Koch and Doctor Krüger Kroneck, after having availed themselves of the permission mentioned to leave the limits of their internment, failed to return as they were unquestionably bound to do. Furthermore, money was supplied by Doctor Kroneck with which the yacht Eclipse was purchased by six officers of the Kronprinz Wilhelm who escaped from the jurisdiction of the Government of the United States.

On the second point, Secretary Lansing said:

Should the return of Doctor Kroneck be effected the Government of the United States should not consent to his release under the application to naval officers of the Geneva Convention rules, as on account of considerable sickness on the interned ships his presence on board is necessary.

So far as appears from the published correspondence between the twogovernments, the escaped officers and men at large, but whose whereabouts are unknown to the American Government, have not been returned by Germany to the United States in accordance with the Russian precedent. Secretary Lansing is clearly right in insisting upon the seriousness of the affair, because if the word of honor of officers both for themselves and for their men is not sufficient to bind the consciences of the paroled members of interned crews, it follows that such members must be kept under control and supervision. Otherwise the neutrality of the country interning the war vessel and crew will be impugned, and a failure to take the necessary measures to prevent the escape of such persons will tax governments with unneutral conduct.

JAMES BROWN SCOTT.

THE BRYAN PEACE TREATIES

. We are printing in the Supplement to this number of the Journal the complete English texts of the treaties negotiated by former Secretary of State Bryan for the purpose of advancing the cause of general peace, the ratifications of which have been exchanged up to the present time (October 1, 1916), namely, the treaties with Bolivia, Chile, China, Costa Rica, Denmark, Ecuador, France, Great Britain, Guatemala, Honduras, Italy, Norway, Paraguay, Peru, Portugal, Russia, Spain, Sweden and Uruguay. All of these treaties are based upon the same principle, namely, that disputes which the high contracting parties are unable to adjust by diplomacy or arbitration shall be referred to a commission for investigation and report and that hostilities may not be resorted to in the meantime. Several formulas for stating and applying these principles were adopted from time to time, and the later treaties present a combination of two or more of the different drafts used. It is believed that it will be of interest to the readers of the Journal to classify the provisions of the treaties so as to show the different forms used with respect to the various countries.

Jurisdictional Clauses

Four variations of phraseology have been used to express the kind of disputes which the high contracting parties agree to refer for investigation and report to the permanent international commissions. They are, with the countries using them, as follows:

All disputes of every nature whatsoever to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact.

Bolivia, Costa Rica, Ecuador, Great Britain, Peru, Portugal and Uruguay.

All disputes of every nature whatsoever which diplomacy shall fail to adjust.

Chile, Denmark, Guatemala, Honduras, Paraguay and Russia.

Any disputes of whatever nature they may be when ordinary diplomatic proceedings have failed and the high contracting parties do not have recourse to arbitration.

China, France, Italy, Spain and Sweden.

All disputes of every nature whatsoever, provided the treaties in force do not prescribe settlement by arbitration.

Norway.

Postponement of Hostilities

The treaties contain substantially the same provision on this point, namely, an agreement not to declare war or begin hostilities during the investigation of the commission and before its report is submitted. A slight modification is made in the treaty with Chile, which adds to this paragraph a clause reading "nor before all resources stipulated in this treaty have proved unsuccessful." This clause contemplates the submission of the case to the Hague Court of Arbitration. (See heading "Action after Receipt of Report.")

Composition of the Commission

All of the treaties provide that the commission of investigation shall be composed of five members. The manner of their appointment is most frequently governed as follows:

One member shall be chosen from each contracting country by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country.

Bolivia, Costa Rica, Denmark, Great Britain, Guatemala, Honduras, Italy, Paraguay, Peru, Portugal and Uruguay.

The same formula is used by Chile, but with an additional stipulation that the fifth member shall not belong to any nationality already represented on the commission, and that he shall be its president.

The same formula is likewise used by Ecuador, but with this proviso, that in case of dispute regarding the selection of the fifth member, who shall be president of the commission, the two Governments shall request the President of the Swiss Confederation to choose such member.

The treaties with China, France, Spain and Sweden use the original formula together with the addition made in the case of Chile, and add the following clause:

In case the two governments shall be unable to agree on the choice of the fifth

commissioner, the other four shall be called upon to designate him, and failing an understanding between them, the provisions of Article 45 of the Hague Convention of 1907 shall be applied.

Norway uses the original formula and adds that if an agreement is not reached as to the appointment of the fifth member, he shall be chosen according to the rules laid down in Article 87 of the Hague Convention of 1907 for the peaceful settlement of international disputes.

A shorter formula is provided in the treaty with Russia, under which each government designates two members (without reference to nationality) and the fifth is designated by common consent, it being stipulated that he shall not belong to any nationalities already represented on the commission, and that he shall be its president.

In the British treaty a special provision was inserted to allow the substitution upon the commission of a person to be named by a self-governing dominion in case the dispute mainly affects the interest of such dominion.

Removal of Commissioners

The treaties with Bolivia, Costa Rica, Peru and Uruguay provide that each of the contracting parties shall have the right to remove at any time before investigation begins any commissioner selected by it and to name his successor, and under the same conditions shall also have the right to withdraw its approval of the fifth commissioner selected jointly, in which case a new commissioner shall be selected jointly as in the original selection.

The treaties with Chile and Ecuador vary this clause by providing that each government shall have the right to remove at any time before investigation begins any commissioner or commissioners selected by it, but must appoint his or their successors at the time of revoking the appointment. Either government shall have the right to withdraw its approval of the fifth member, in which case his successor must be appointed by common agreement within thirty days and, lacking such agreement, the appointment will be made by the President of the Swiss Confederation.

The treaty with Italy makes another variation by providing that each of the contracting parties shall have the right before the investigation has begun to substitute for one of the members of the commission appointed by it another person chosen from the category to which the commissioner to be replaced belonged.

The other treaties contain no provision on this point.

Expenses

The stipulation on this point is generally that the expenses of the commission shall be paid by the two governments in equal proportion: Chile, Denmark, Ecuador, Great Britain, Guatemala, Honduras, Norway, Paraguay, Portugal and Russia.

Some of the treaties contain, in addition, a stipulation that when the commissioners are actually employed they shall receive such compensation as may be agreed upon by the contracting parties: Bolivia, Costa Rica, Italy, Peru and Uruguay.

In still other cases the stipulation varies by providing that the contracting parties, before designating the commissioners, shall reach an understanding in regard to their compensation and that each government shall bear half of the expenses of the commission: China, France, Spain and Sweden.

Period for Appointment of Commissioners

Three different periods are used:

As soon as possible after the exchange of ratifications of the treaty: Bolivia, Costa Rica, Peru and Uruguay.

Within four months after the exchange of ratifications:

Chile, Denmark, Guatemala, Honduras, Norway and Paraguay. Within six months after the exchange of ratifications:

China, Ecuador, France, Great Britain, Italy, Portugal, Russia, Spain, and Sweden.

Vacancies

All of the treaties provide that vacancies shall be filled according to the manner of the original appointment. Those treaties which make provision for the removal of commissioners contain special provisions for appointing their successors, as above indicated, and such vacancies are excluded in these treaties from the operation of the general provision regarding other vacancies.

The treaty with Ecuador contains the stipulation that general vacancies shall be filled within fifteen days after the receipt of notice of the vacancy.

Date of Organization of the Commission

Only the treaties with Chile and Ecuador provide that the date of the organization of the commission shall be notified to the contracting governments.

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Tenure of Office of the Commissioners

Most of the treaties make no reference to the tenure of office of the commissioners, it apparently being understood that their term of office is indefinite.

The treaties with China, France, Russia, Spain, and Sweden, however, contain the following provision:

The members shall be appointed for one year and their appointment may be renewed. They shall remain in office until superseded or reappointed, or until the work in which they are engaged at the time their office expires is completed.

The treaty with Italy contains the following provision:

Each commissioner shall hold his place during a term of four years; at the expiration of this term, or in the event of vacancy, the confirmation or the substitution of the commissioner whose term may have expired or whose place may be vacant shall be made in the same manner.

Procedure

The procedure of the commission is not always provided for in the treaties. The treaties with Denmark and Norway provide that, unless otherwise agreed upon, the procedure shall be regulated by the provisions of Chapter III of the Hague Convention of 1907 for the peaceful settlement of international disputes.

The following provision regarding procedure is contained in the treaties with China, France, Russia, Spain, and Sweden: "The commission shall as far as possible be guided by the provisions contained in Articles 9 to 36 of Convention I of The Hague of 1907."

The treaties with Chile, Ecuador and Italy provide that, in the absence of an agreement to the contrary, the commission shall adopt its own regulations regarding procedure.

Method of Referring Disputes to Commission

The treaties usually contain an apparently simple provision that the dispute shall be referred to the international commission by the contracting parties: Bolivia, Costa Rica, Denmark, Great Britain, Guatemala, Honduras, Norway, Paraguay, Peru, Portugal, Sweden, and Uruguay.

The treaties with Chile and Ecuador provide that the reference may be made by either of the two governments.

The treaty with Italy provides that the reference may be made either by common agreement of the two governments, or by either of them. A more detailed article on this point is contained in the treaties with China, France, Russia, and Spain, which provides that each party shall have a right to ask that the investigation be entrusted to the commission. Notice shall be given to the president of the commission, who shall at once communicate with his colleagues.

Jurisdiction Assumed by Commission

Four different formulas have been used to frame such a provision:

The international commission may, by unanimous agreement, spontaneously offer its services, and in such case it shall notify both governments and request their cooperation in the investigation.

Bolivia, Costa Rica, Great Britain, Peru, and Uruguay.

The international commission may act upon its own initiative, and in such case it shall notify both governments and request their co-operation in the investigation.

Denmark, Guatemala, Honduras, Norway, Paraguay, and Portugal.

The president of the commission may, after consulting his colleagues and upon receiving the consent of the majority of the members of the commission, offer the services of the latter to each of the contracting parties. Acceptance of that offer by one of the two governments shall be sufficient to give jurisdiction of the case to the commission.

China, France and Spain.

The president of the commission, by a note addressed to the International Bureau of the Permanent Court at the Hague, which shall be communicated without delay to both governments, may remind the parties that the services of the commission are at their disposal.

Sweden.

Place of Meeting

The place of meeting of the commission is provided for in five of the treaties and they stipulate that it shall be determined by the commission itself.

Chile, China, Ecuador, France and Spain.

Formulation of the Question at Issue

This point is covered only in the treaties with China, France, Spain and Sweden, which contain the uniform clause that,

Each contracting party shall have a right to state to the president of the commission what is the subject-matter of the controversy. No difference in these statements, which shall be furnished by way of suggestion, shall arrest the action of the commission.

Measures Pending Submission of Report

A provision of this kind is contained in only three treaties, those with China, France and Sweden, which provide that,

In case the cause of the dispute should consist of certain acts already committed or about to be committed, the commission shall as soon as possible indicate what measures to preserve the rights of each party ought in its opinion to be taken provisionally and pending the delivery of its report.

Facilities for Investigation to be Afforded to Commission

All of the treaties are uniform in providing that the contracting parties shall furnish the commission with the means and facilities required for its investigation and report. The treaty with Italy adds: "provided that in their judgment this does not conflict with the laws or with the supreme interests of the state, and provided that the interests and rights of third states shall not thereby suffer damage."

Time Allowed for Submission of Report

The treaties usually provide that the report of the commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement: Bolivia, Costa Rica, Great Britain, Italy, Norway, Peru, Portugal, and Uruguay.

The same provision is contained in the following treaties, except that the period of one year may be only extended and not limited: Chile, Denmark, Guatemala, Honduras and Paraguay.

The following treaties provide for a period of one year, unless a different period is agreed upon: China, France, Russia, Spain, and Sweden.

The treaty with Ecuador also provides for a period of one year, but adds that this period may be extended for an additional six months if, for reasons of *force majeure*, it is not possible for the commission to complete its investigation and submit its report within one year.

Vote Necessary for Agreement on Report by Commission

Most of the treaties are silent on this point, but the following provision is contained in the treaties with China, France, Russia, Spain, and Sweden:

The conclusion of the commission and the terms of its report shall be adopted by a majority. The report, signed only by the president acting by virtue of his office, shall be transmitted by him to each of the contracting parties.

The treaty with Chile contains the following provision: "The resolutions of the commission, as well as its final report, will be adopted by the majority of its members."

Action after Receipt of Report

The usual stipulation on this point is as follows:

The high contracting parties reserve the right to act independently on the subjectmatter of the dispute after the report of the commission shall have been submitted.

Bolivia, Costa Rica, Great Britain, Guatemala, Honduras, Italy, Paraguay, Peru, Portugal, and Uruguay.

The treaty with Ecuador has the same provision, but adds that such action may be taken also if no report is submitted within the time fixed.

The treaties with Denmark and Norway contain the usual formula, but provide that upon the receipt of the report the parties shall endeavor to adjust the dispute directly on the basis of the findings of the commission.

Another form of expression on this point is as follows: "The high contracting parties reserve full liberty as to the action to be taken on the report of the commission:" China, France, Russia, Spain, and Sweden.

The treaty with Chile contains a special provision not found in any of the other treaties, as follows:

Once the report is in possession of both governments, six months' time will be available for renewed negotiations in order to bring about a settlement of the difficulty in view of the findings of said report; and if even during this new term both governments shall be unable to reach a friendly arrangement, the dispute will then be submitted to the Permanent Court of Arbitration established at the Hague.

A proviso is added, excluding from arbitration "any question that may affect the independence, the honor or the vital interests of either or both of the countries, or the provisions of their respective constitutions, or

the interests of a third nation." Another paragraph provides that in case arbitration is resorted to, a special agreement shall be previously agreed upon specifying the matter in controversy, the extent of the arbiter's powers, and the length of time to which the court of arbitration must subject its organization and procedure, including the presentation of memorials, proofs and pleas.

Duration of the Treaties

A common provision is to the effect that the treaty shall remain in force for five years, dating from the exchange of ratifications, and remain in force thereafter until twelve months after one of the contracting parties shall have given notice to the other of an intention to terminate it: Bolivia, Costa Rica, Denmark, Great Britain, Guatemala, Italy, Honduras, Norway, Paraguay, Peru, Portugal, and Uruguay.

A like provision is contained in the following treaties, except that it is stipulated that the denouncement of the treaty after the five-year period must, in order to be effective, take place at least six months before the expiration of that period: China, France, Russia, Spain.

The treaty with Ecuador provides that it shall remain in force for five years and that unless notice to terminate it is given one year before the expiration of that period, it shall be considered as renewed for another year, and so on successively.

The treaty with Sweden provides for a five-year period and for renewals for additional periods of five years, unless denounced at least six months before the expiration of such period.

The treaty with Chile provides that it shall remain in force for five years, and for successive periods of five years until one of the high contracting parties shall have given notice of its intention to terminate it.

As stated at the outset, the above data applies only to the treaties which have become effective at the date of the present writing. Supplementary notes of this character will be inserted in these columns as additional treaties go into effect.

GEORGE A. FINCH.

THE AMERICAN-MEXICAN JOINT COMMISSION OF 1916

In an editorial comment in the July Journal, attention was called to the 21st article of the treaty of peace and friendship, of February 2, 1848 between United States and Mexico, popularly known as the Treaty of Guadalupe Hidalgo, which provides for the arbitration of future disagreements between the two republics. This treaty is still in force, and as the United States has recognized Carranza's Government as the de facto Government of Mexico, disputes between the two countries should, and indeed must be, settled according to its terms if treaties are to be kept.

Commissioners have been appointed by the two governments as required by the terms of the article, and the Commissioners are at present sitting in session at Atlantic City, New Jersey, endeavoring, it is to be hoped in the most sincere and earnest manner, to settle the differences which have arisen between the two countries and to preserve the state of peace and friendship between them.

A word or two should be said as to the origin of the present dispute. On March 9, 1916, Villa's bandits crossed the border and attacked Columbus, New Mexico. Considering this incident as sufficient evidence that Carranza was unable to keep order in the northern districts of his de facto government and to punish Villa and his fellow bandits for the attack upon Columbus, an expeditionary force under Brigadier General Pershing crossed the Rio Grande in pursuit of Villa.² A small detachment of this force was attacked by Carranzistas at Carrizal, some sixty miles south of the American boundary line, on June 21, 1916, because it attempted to pass eastward through this town after Carranza's lieutenant had informed General Pershing not to move south, east or west. In the encounter, 12 Americans were killed and 14 were captured; of the Mexicans 46 were said to have been killed and 39 wounded. President Wilson demanded at once that the prisoners be released. This Carranza did on the 28th, and the crisis was passed. In the meantime President Wilson called out 100,000 men of the National Guard and stationed them along the frontier.

The relief from the tension, due to the release of the prisoners, and the presence of a force on the border ready to enter Mexico started again the wheels of diplomacy. On July 4th Carranza's Government stated itself as anxious to prevent a conflict between the two countries, and after reminding the United States that it had suggested "cantonments along

¹ The text of the article is quoted on page 577 of the July, 1916, Journal.

² For comment on this expedition, see this Journal for April, 1916, p. 337. For the text of the diplomatic correspondence which passed between Mexico and the United States regarding the expedition, see Supplement to this Journal for July, 1916.

the boundary line," it stated the points of conflict between them as follows:

The government is disposed now, as it has always been, to seek an immediate solution of the two points which constitute the true causes of the conflict between the two countries, to wit: the American Government believes reasonably that the insecurity of its frontier is a source of difficulty and the Mexican Government on its part believes that the presence of American troops on Mexican territory, aside from being a trespass on the sovereignty of Mexico, is the immediate cause of the conflict. Therefore, the withdrawal of American troops on one hand and the protection of the frontier on the other are the two essential problems the solution of which must be the directing object of the efforts of both governments.

The Mexican Government is willing to consider in a quick and practical way, and prompted by a spirit of concord, the remedies which should be applied to the present situation.

Several Latin American countries have offered their friendly mediation to the Mexican Government, and the latter has accepted it in principle. Therefore the Mexican Government only awaits information that the Government of the United States would be disposed to accept this mediation for the purpose mentioned above or whether it is still of the belief that the same results may be obtained by means of direct negotiations between both governments.

In the meantime this government proposes to employ all efforts that may be at its disposal to avoid the recurrence of new incidents which may complicate and aggravate the situation. At the same time it hopes that the American Government on its part may make use of all efforts to prevent also new acts of its military and civil authorities on the frontier that might cause new complications.

This willingness on the part of Carranza to consider "the two points which," in his opinion, "constitute the true causes of the conflict between the two countries," was produced by the troops on the border, Secretary Lansing's identic note to all Latin American countries disclaiming a desire on the part of the United States to take drastic action in Mexico, and his note of like date (June 25) to the de facto Government of Mexico demanding an immediate release of the prisoners and an early statement from that government "as to the course of action it wishes the Government of the United States to understand it has determined upon," which statement the United States expected would be made through the usual diplomatic channels, and not through subordinate military commanders, as in the case of General Trevino's statement to General Pershing not to advance further south or to move east or west.

Secretary Lansing stated on the 7th in his reply to the Mexican note of the 4th that the United States reciprocates the same desire and "is pre-

¹ New York Times Current History, August, 1916, p. 836.

pared immediately to exchange views as to a practical plan to remove finally and to prevent a recurrence of the difficulties which have been the source of the controversy."

Four days later Carranza's Government formally proposed the appointment of three commissioners by each of the countries to fix responsibility and to arrange definitely the pending difficulties and those that may arise in the future. Thus the Mexican Minister of Foreign Affairs directed the Mexican agent in Washington to say to the State Department:

I have received instructions from the First Chief in charge of the executive power of the Union, suggesting that you convey to his Excellency, President Wilson, the idea of naming three commissioners to represent each of our governments to meet in some place of mutual designation, hold conferences and resolve at once the point regarding the definite withdrawal of the American forces now in Mexico, draft a protocol of agreement regarding the reciprocal crossing of forces and investigate the origin of the incursions taking place up to date, so as to be able to ascertain responsibility and arrange definitely the pending difficulties or those that may arise between the two countries in the future, all this to be subject to the approval of both governments.

The purpose of the Mexican Government is that such conferences shall be held in a spirit of the most frank cordiality and with an ardent desire to reach a satisfactory agreement and one honorable to both countries, with the understanding that if the United States Government accepts the idea hereby suggested this shall be the recommendation made to the commissioners designated. The Mexican Government considers this the most efficacious medium of reaching a satisfactory solution and hopes the United States will state whether the suggestion is acceptable, in order that it may be immediately put in practice and that the Mexican Government may send the names of its delegates.⁴

It will be observed that the *de facto* Government refers constantly and consistently to the border incident and limits the jurisdiction to the two points in the Mexican note of July 4th. Acting Secretary Polk acknowledged the Mexican note of the 11th on the 28th of July, and accepted its proposals but sought to broaden their scope in the following way:

In reply I have the honor to state that I have laid your Excellency's note before the President and have received his instructions to inform your Excellency that the Government of the United States is disposed to accept the proposal of the Mexican Government in the same spirit of frank cordiality in which it is made. This government believes, and suggests, however, that the powers of the proposed commission should be enlarged so that, if happily a solution satisfactory to both governments of the

New York Times Current History, September, 1916, p. 1020.

question set forth in your Excellency's communication may be reached, the commission may also consider such other matters the friendly arrangement of which would tend to improve the relations of the two countries; it being understood that such recommendations as the commission may make shall not be binding upon the respective governments until formally accepted by them.

Should this proposal be accepted by your Excellency's Government, I have the honor to state that this government will proceed immediately to appoint its commissioners, and fix, after consultation with your Excellency's Government, the time and place and other details of the proposed conferences.

On August 4th, the Mexican Secretary of Foreign Relations sent a further note informing the Department of State of the appointment of the Mexican Commissioners, and limiting their scope to the two points contained in the Mexican note of July 4th. This note in full reads as follows:

In due reply to the courteous note of the Department of State, dated July 28, 1916, I have the honor to say to your Excellency that the First Chief of the Constitutionalist Army, in charge of the executive power of the Mexican Republic, congratulates himself upon the laudable efforts of the American Government to arrive at a solution of existing difficulties between the two countries and, to that effect, considering it of the greatest importance that a prompt decision be reached of the points which have caused the existing differences between the United States and Mexico, referred to in the note of the Mexican Government dated July 4 last, has seen fit to appoint at once a commission of three persons, constituted by Licentiate Luis Cabrera, Engineer Ignacio Bonillas, and Engineer Alberto J. Pani, to whom instructions have been given to devote their attention preferably to the resolution of the points mentioned in the previous note of this department.

Licentiate Eliseo Arredondo has been authorized to treat with the Department of State the matter of details relating to the place and date on which the Commissioners of the Mexican Government should meet the Commissioners of the United States in order to commence their labors.

The Department of State subsequently announced the appointment of the Honorable George Gray, the Honorable Franklin K. Lane, and Mr. John R. Mott as the American Commissioners. The Commission met for the first time in New York City on September 4th, and then continued its sessions at New London, Connecticut. At the luncheon to the American-Mexican Joint Commission in New York City, Secretary Lansing made the following admirable, temperate, kindly and statesmanly address, which he has modestly entitled "Remarks:"

⁵ New York Times Current History, September, 1916, p. 1021.

⁶ Ibid.

GENTLEMEN: It is a great pleasure to me to be present at this first assembling of the American-Mexican Joint Commission which so clearly manifests to the world the spirit of good will and mutual regard which animates the Republics of America in the settlement of their controversies. It is not only a pleasure but an honor for me to tender to you on behalf of the President and Government of the United States greetings on this auspicious occasion and a hearty welcome to the Commissioners of Mexico, who have come so far to participate in these sessions.

With the pleasure and satisfaction of being here to-day there is also a full realization of the difficulty of the task which lies before you. It is no easy matter to reach an agreement as to the complex subjects of mutual interest to our two countries and to find a way which will satisfy not only the two Governments but also the peoples of the two nations. I believe that you, gentlemen, share with me the sincere desire to find that way and to bring the United States and Mexico into more complete accord by a just appreciation of the many domestic as well as international problems which each Government has had to face in these troublous times.

I need not assure you that my Government has been inspired throughout the past three years with a sincere desire to arrange in an amicable way the numerous questions which have arisen as a result of the civil strife which has shaken the Mexican Republic to its very foundations and has caused so much loss of life and property, so much suffering and privation. We have watched the progress of the revolution with anxious solicitude; we have tried to be fair in judgment and to see things from the point of view of those who control the destinies of Mexico; we have sought to be patient and to await the time when the approach of peace and order in Mexico would offer favorable opportunity for the adjustment of our difficulties; from first to last we have kept our minds free from rancor and bitterness and prejudice, and have in a spirit of disinterested friendliness confidently expected that the day would come when the representatives of the two countries could meet and calmly and frankly discuss our international relations.

That day has at last arrived. The present conference is a realization of our expectation, and I look forward to its future accomplishment with assurance that it will settle the questions which have been causes of irritation. Its success depends in large measure—I think that I may say, entirely—upon the spirit which you, the commissioners of both Governments, evince when you come to discuss the various phases in our relations. If this spirit is one of frankness, of trust, of sympathy, it requires no prophet's vision to foresee that you will succeed; and, if you succeed, you will have the satisfaction of knowing that you have performed an inestimable service to your countries. But, if suspicion, doubt, and aloofness mark your deliberations, you may expect to accomplish little and leave the two nations in the same tangle of misunderstandings and false judgments which I feel have been the chief reasons for our controversies in the past.

The responsibility rests with you, gentlemen. The burden is not a light one, but you have generously and patriotically assumed it in response to the call of your Governments. I am sure that the American commissioners, whom I know so well, and the Mexican commissioners, for whom I have high respect, knowing from others of their distinguished attainments, will show that consideration and patience which will bring you into harmony and agreement.

It is not my purpose to dwell upon the subjects which will be considered by the

commission. The immediate subject and the immediate cause of your meeting here to-day is the situation along the international boundary. I believe that a temporary solution could be readily found, but the Government of the United States seeks a permanent, not a temporary, settlement of the difficulty, and I feel assured that the Government of Mexico desires nothing less. To reach such a settlement, one that will be lasting and sure, it will be necessary to go to the root of the matter, to consider international rights and duties, and to discuss the relation of the individual to the state as well as the relation of the state to the individual, subjects fundamental to social order and to the intercourse between enlightened governments.

It seems to me that if you would reach a complete adjustment of the matters affecting our relations which will satisfy the future as well as the present you can not avoid considering the personal rights and economic interests of Americans who have found in Mexico a field for their energies. It is through the consideration of such subjects that the seeds of future controversy can be destroyed and entire confidence restored, so that the Mexican Government and people may build on the ruins of war and disorder a new and more lasting prosperity than the Republic has ever known, a prosperity founded on liberty and justice under a government supported by the united will of a free people.

This, gentlemen, I conceive to be your task; and I hope most earnestly that your sphere of discussion will widen as you meet from day to day, so that every obstacle, which has arisen or which might hereafter arise to vex the cordial relations of your Governments, may be removed, and your two countries and their peoples may be drawn into a closer union cemented by friendship and good will and by that mutual respect for justice which should govern all nations in their intercourse with one another.

To the commission as a whole I look with confident hope that they will succeed in the great mission with which they have been charged, and I know that this hope is near to the hearts of the millions of Americans and Mexicans who are watching you to-day as you enter upon the performance of your duties.

That the commissioners shall untie not cut the Gordian Knot and that they may, in their widsom, find "a permanent, not a temporary, settlement of the difficulty," as suggested by Secretary Lansing, is the hope of the undersigned, as it must be the hope of every friend and well-wisher of the two countries. It will be a great triumph, however, if the commission brings about even a temporary settlement, because of the insistence by Mexico that American troops shall evacuate its territory and the insistence by the United States that its troops shall not evacuate Mexico before amends have been made for the unprovoked attack upon American territory and satisfactory guarantees given for the future. Sovereignty does not yield gracefully to arbitration or compromise.

JAMES BROWN SCOTT.

ANOTHER SPECIAL SUPPLEMENT TO THE JOURNAL

The Editors are pleased to announce that arrangements have been made for the issue of another Special Supplement to the Journal, which will contain the diplomatic correspondence of the United States with belligerent governments relating to neutral rights and duties. This correspondence will be taken up where it was left off in the Special Supplement to the July Journal for 1915, and continued up to October 15, 1916, the date on which the new Special Supplement goes to press.

This Special Supplement will contain, in addition to the continuation of the correspondence relating to British restraints on commerce, German submarine warfare, contraband of war, the status of armed merchantmen, the destruction of the Frye, etc., correspondence on a number of new subjects, such as the hovering of belligerent warships near the territorial waters of the United States, interference by belligerents with the mails, the recall of the Austro-Hungarian Ambassador and the Military Attachés of Germany, the case of the British steamer Appam, the escape of officers and men from ships interned in the United States, the status of American consular officers in belligerent territory occupied by enemy troops, dual nationality, and correspondence regarding specific cases of torpedoing of merchant vessels, such as the Arabic, the Leelanaw, and the Sussex.

It is estimated that the volume will make about 450 or 500 pages, and it is hoped that it will be ready for distribution during the month of October or early in November. Like the previous Special Supplement, it will be sent to all members of the Society and subscribers to the JOURNAL with the compliments of the Society.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: Ann. sc. pol., Annales des sciences politiques, Paris; Vie Int., La Vie Internationale, Brussels; Arch. dipl., Archives Diplomatiques, Paris; B., boletin, bulletin, bolletino; P. A. U., bulletin of the Pan-American Union, Washington; Clunet, J. de Dr. Int. Privé, Paris; Doc. dipl., France, Documents diplomatiques; B. Rel. Ext., Boletin de Relaciones Exteriores; Dr., droit, diritto, derecho; D. O., Diario Oficial; For. rel., Foreign Relations of the United States; Ga., gazette, gaceta, gazzetta; Cd., Great Britain, Parliamentary Papers; Int., international, internacional, internazionale; J., journal; J. O., Journal Officiel, Paris; L., Law; L'Int. Sc., L'Internationalism Scientifique, The Hague; M., Magazine; Mém. dipl., Memorial diplomatique, Paris; Monit., Moniteur belge, Brussels; Martens, Nouveau recueil générale de traités, Leipzig; Q. dip., Questions diplomatiques et coloniales; R., review, revista, revue, rivista; Reichs G., Reichs-Gesetzblatt, Berlin; Staats., Staatsblad, Netherlands; State Papers, British and Foreign State Papers, London; Stat. at L., United States Statutes at Large; Times, The Times (London).

January, 1916:

- 27 France. Additional contraband list issued. J. O., Jan. 27, 1916.
- 30 France—Great Britain. Money-order convention signed. French text: J. O., 1916:1780.

March, 1916.

- 14 ARGENTINE REPUBLIC. Neutrality proclamation issued in the war between Germany and Portugal. R. dipl. y con. Argentina, 1:332.
- 16-18 First Pan-American Aeronautical Conference held in Santiago de Chile. R. gén. de dr. int. public, 23:300.
- 21 France. France signed an agreement with the Chamber of Commerce of Copenhagen and the Chamber of Danish Industry by which the latter agree not to re-export French merchandise to enemy countries. J. O., March 21, 1916.
- 27-28 EUROPEAN WAR. The Allied Governments held a conference in Paris where a series of resolutions were passed regarding an economic alliance. Text: R. gén. de dr. int. public, doc. 23: 127; Supplement to this Journal, p. 227.

April, 1916.

- 27 International Commercial Congress met in Paris. J. O., April 28, 1916.
- 29 Congo. France, Great Britain, Italy, Russia and Japan signed a declaration guaranteeing the territorial integrity of the Belgian Congo. R. gén. de dr. int. pub. doc. 23:130.

May, 1916.

- 4 China—Netherlands. Dutch proclamation of the arbitration convention signed June 11, 1915, ratifications of which were exchanged at Peking April 20, 1916. Dutch and French texts: Staatsblad, 1916, No. 181.
- 10 Germany—Italy. Italian decree forbidding the importation of German goods into Italian territory. French text: Clunet, 43: 1423.
- 12 Germany—Italy. Italian decree requisitioning German ships in Italian ports. J. O., June 30, 1916. On June 30 notification made of conditions for admission into private warehouses of goods disembarked from German ships. Text: London Gazette, May 12, June 30, 1916.
- 19 China—United States. Agreement effected by an exchange of notes extending time for the appointment of the commission under Article 2 of the treaty of September 15, 1914. U. S. Treaty Series, No. 619-A.

June, 1916.

- 1 Santo Domingo. American marines landed at Monte Christi to restore order pending the subsidence of the revolutionary outbreak and the election of a president. Resistance was offered by the natives and an officer of the marines was killed. N. Y. Times, June 2, 1916.
- 1 Guatemala—United States. Agreement effected by an exchange of notes extending time for the appointment of the commission under Article II of the treaty of September 20, 1913. English and Spanish texts: U. S. Treaty Series, No. 598–B.
- 10 Greece. The Island of Thasos occupied by French troops. N. Y. Times, June 12, 1916.
- 20 Japan—Russia. Convention signed for the mutual protection of the interests of the two countries in the Far East. French and

June, 1916.

- English texts: Japan Times, July 9, 1916. On September 14 the Department of State announced that Japan and Russia had both given assurances that the new convention would not modify the "open door" in China. English text in Supplement to this Journal, p. 239; N. Y. Times, Sept. 15, 1916.
- 22 Mexico—United States. Secretary Lansing sent identic notes to the diplomatic representatives of the South and Central American Republics stating the position of the United States in relation to Mexico. N. Y. Times, June 23, 1916.
- 22 NICARAGUA—UNITED STATES. Ratifications exchanged of the convention relating to the Nicaragua Canal route. English and Spanish texts: U. S. Treaty Series, No. 624; English text: Supplement to this Journal, p. 258.
- 24 France—Netherlands. Dutch proclamation of convention signed Sept. 30, 1916, relative to frontiers of Surinam and French Guiana. French text: Staatsblad, 1916, No. 304.
- 28 France. Additional contraband list issued. J. O., 1916:5641.

July, 1916.

- 1 Santo Domingo. Engagement between United States marines and revolutionists. One American and 27 revolutionists killed. N. Y. Times, July 3, 1916.
- 1 United States. The Seamen's Act, approved March 4, 1915, went into effect. On May 29, 1915, the United States notified the following countries of the intention to abrogate so much of certain treaties as was in conflict with this act: Austria-Hungary, Belgium, Bolivia, Brazil, China, Colombia, Denmark, France, Great Britain, Greece, Italy, Netherlands, Roumania, Spain, Sweden, Norway, Congo and Tonga. The following countries have accepted the notice and agreed to the elimination of such stipulations: Austria-Hungary, Belgium, Bolivia, China, Denmark, Great Britain, France, Greece, Italy, The Netherlands and Roumania.
- 2 Mexico—United States. Premier Romanones of Spain tendered the good offices of Spain in settling differences with Mexico.
- 4 Mexico—United States. Carranza replied to the American notes of June 20, 25, and suggested mediation by the Latin American governments. Text: N. Y. Times, July 6, 1916. On July 7 the

July, 1916.

United States offered to exchange views as to a practical plan for settlement, and on July 10 a series of conferences was begun between the Department of State and the Mexican representative in Washington. On July 12 Mexico proposed a commission for settlement, and on July 28 this proposal was accepted. The American Commissioners appointed are: Judge George Gray, Hon. Franklin K. Lane and John R. Mott, Jr. The Mexican Commissioners are: Luis Cabrera, Ignacio Bonillas and Alberto J. Pani. On Sept. 6, the Commission began its sessions at New London, Conn. N. Y. Times, Sept. 7, 1916.

- 7 Spain—Uruguay. Arbitration treaty signed. Washington Post, July 8, 1916.
- 7 France. Decree abandoning the Declaration of London and issuing new regulations concerning contraband and blockade.

 J. O., July 8, 1916; text issued by the Department of State.
- 8 Great Britain. Proclamation abandoning the Declaration of London and issuing new regulations concerning contraband and blockade. London Gazette No. 29657; text issued by the Department of State.
- 9 GERMANY. The German submarine Deutschland arrived at Baltimore after a transatlantic voyage. Held by the United States to be a merchant ship. Sailed August 1 on return voyage and arrived in Bremerhaven August 16. N. Y. Times, July 10, Aug. 2, 17, 1916.
- 11 Central American Court. Reported that the court has decided against Nicaragua in the matter of the canal rights of Costa Rica and Salvador. Washington Post, July 12, 1916.
- 13 Great Britain—United States. Viscount Mersey, arbitrator in the case of the cargo of the Wilhelmina, the American vessel seized by the British in February, 1915, awarded approximately \$390,000 to the owners of the cargo. N. Y. Times, July 14, 1916.
- 15 COLOMBIA—ECUADOR. Boundary treaty signed. P. A. U., 43:287.
- 18 GREAT BRITAIN. Order in Council issued giving list of firms in various countries with which trade is forbidden under the Trading with the Enemy Act, 1915, and a Proclamation dated Feb. 29, 1916. The American list contains 85 names. London Gazette, No. 29671.

July, 1916.

- 22 Germany. Ordinance issued relative to contraband of war. English translation amended. London Gazette, No. 29730.
- 26 Santo Domingo. Federico Henriquez Carvajal proclaimed provisional President of Santo Domingo. N. Y. Times, July 27, 1916.
- 26 Germany. Revised list of contraband issued. Summary: N. Y. Times, July 26, 1916.
- 27 Honduras—United States. Ratifications exchanged of a treaty for the advancement of peace. Spanish and English texts: U. S. Treaty Series, No. 625.
- 29 Germany. Germany executed Captain Charles Fryatt of the Great Eastern Railway steamship Brussels, captured in June, on the charge of an alleged attempt to ram a German submarine March 28, 1915. Times, July 29, Aug. 1-3, 1916.
- 29 France. Note sent to neutral governments protesting against the action of Germany in deporting men, women and children from France in violation of the Hague convention. Text: French Yellow Book issued August 2, 1916; N. Y. Times, July 30, Aug. 3, 1916.
- 29 GERMANY—UNITED STATES. The steamer Appam, brought into Norfolk as a German prize on February 1, 1916, was awarded to the British owners by the Federal Court. N. Y. Times, July 30, 1916.
- 31 DENMARK—GREAT BRITAIN. Ratifications exchanged of a convention renewing for 5 years the arbitration convention of October 25, 1905, signed May 3, 1916. G. B. Treaty Series, 1916, No. 3.

August, 1916.

- 3 GERMANY—UNITED STATES. American steamer Owego fired upon by German submarine. On August 27 Germany replied to the American protest. Text: N. Y. Times, Sept. 1, 1916.
- 4 Denmark—United States. Treaty signed providing for the sale of the Danish West Indies to the United States for \$25,000,000. On August 14 the Lower House of the Danish legislature voted in favor of the treaty, provided the people of the islands approved of the sale. On August 24 the Upper House rejected the treaty. On September 7, the U. S. Senate advised the ratification of the

August, 1916.

- treaty. N. Y. Times, Sept. 8, 1916; N. Y. Times, Aug. 5, 15, 25, 1916; this Journal, 8:367.
- 14 China—United States. The following commission has been appointed under the peace treaty between the two countries: For China: Hon. Wellington Koo; for the United States: Hon. Andrew D. White and Hon. H. J. Horst of Norway; umpire: Hon. H. L. Hammarskjöld, Premier of Sweden.
- 15 Great Britain. Statement issued relative to delay in forwarding mails. N. Y. Times, Aug. 15, 1916.
- 16 Great Britain—United States. Treaty signed for the protection of insect-destroying birds.
- 20 Paraguay. Dr. Manuel Franco took office as President. Washington Post, Aug. 21, 1916.
- 24 Haiti—United States. Protocol signed amplifying the financial treaty of September 16, 1915. N. Y. Times, Aug. 25, 1916.
- 28 Germany—Italy. On August 27 Italy informed Germany, through Switzerland, that owing to the assistance given by Germany to Austria, Italy considered that a state of war existed with Germany as from August 28. N. Y. Times, Aug. 28, 1916.
- 27 Greece—Bulgaria. Bulgarian troops occupy all but one of the Greek forts at Kavala. N. Y. Times, Aug. 28, 1916.
- 27 Austria-Hungary—Roumania. Roumania declared war on Austria-Hungary to date from 9 p. m., August 27. N. Y. Times, Aug. 29, 1916.
- 28 Germany. Embargo placed on the importation of all tobacco except Turkish. N. Y. Times, Sept. 6, 1916.
- 28 GERMANY—ROUMANIA. Germany declared war on Roumania. N. Y. Times, Aug. 29, 1916.
- 30 Greece. Greek revolutionists at Salonica seized the barracks of the Greek infantry and proclaimed a provisional government, calling upon the people to combine with the Allies and drive out the Bulgarians. N. Y. Times, Aug. 31, 1916.
- 31 Bulgaria—Roumania. The Roumanian minister to Bulgaria asked for his passports. N. Y. Times, Sept. 1, 1916.
- 31 ROUMANIA—TURKEY. Turkey delivered a declaration of war to the Roumanian Minister at 8 p. m., Aug. 31. N. Y. Times, Sept. 2, 1916.

September, 1916.

- 1 Bulgaria—Roumania. Bulgaria formally declared war on Roumania. N. Y. Times, Sept. 2, 1916.
- 2 Greece. The Allies submitted new demands on Greece, relative to Allied control of posts and telegraphs, dismissal of enemy agents in Greece, and necessary assurance as to Greek subjects guilty of complicity in espionage, etc. N. Y. Times, Sept. 6, 1916.
- 3 Greece. The Allies seized four German and three Austrian ships in the Greek harbor of Piraeus.
- 3 China—Japan. Japan presented to China demands for apologies, indemnities and certain rights in Southern Manchuria and Eastern Mongolia, by way of reparation for the alleged attack on Japanese troops at Chang Chiatum, Aug. 13, 1916. N. Y. Times, Sept. 13, 1916.
- 5 United States. Neutrality proclamation issued in the war between Germany and Italy.
- 5 United States. Note sent to Allied Powers refusing to treat all undersea craft as war vessels. N. Y. Times, Sept. 6, 1916.
- 7 Denmark—United States. The United States Senate advised the ratification of the treaty for the purchase of the Danish West Indies. On Sept. 26, the lower House of Denmark approved the treaty. On Sept. 27, the Danish Parliamentary Committee decided that a plebiscite should be held in the islands before the sale is submitted to the Rigsdag. N. Y. Times, Sept. 27, 28, 1916.
- 8 Central American Court. The court decided in favor of Salvador in the suit against Nicaragua on the ground of infringement of rights in Fonseca Bay by the treaty of Nicaragua with the United States signed Aug. 5, 1914, ratifications of which were exchanged June 22, 1916. Honduras has also brought suit before the court. Announcement has been made that Nicaragua will not accept the decision of the court. On Sept. 14, 1916, the court announced that sixty days would be given Nicaragua in which to reply to the claim of Salvador. N. Y. Times, Sept. 9, 15, 1916.
- 8 United States. The President signed the General Revenue Bill which carries provisions giving the President power to take drastic retaliatory steps against interference with American commerce by belligerent nations. Text: N. Y. Times, Sept. 8, 1916.

September, 1916.

- 12 Argentine Republic—Spain. The Senate of Argentine Republic agreed to the ratification of the arbitration treaty with Spain. Washington Post, Sept. 13, 1916.
- 13 Japan—Russia—United States. Japan and Russia replied to the American request for information touching the Russo-Japanese convention signed September 3. Formal assurances were given that the "open door" policy and the integrity of China were not menaced. Text of notes: N. Y. Times, Sept. 15, 1916.
- 14 Greece. Germany officially announced that the commander of the Greek forces stationed at Serai, Drama and Kavala, having appealed to the German commander for protection against the pressure of the Allies, the entire Greek force will be interned in Germany until Greece is free of invaders. On Sept. 20 it was reported that Greece had demanded the release of these Greek troops. N. Y. Times, Sept. 15, 21, 1916.
- 15 Great Britain. Measures adopted for restricting the trade of the United States with Holland and the Scandinavian countries in certain prohibited articles. N. Y. Times, Sept. 16, 1916.
- 22 Great Britain—United States. Great Britain notified the United States that the 38 Germans, Austrians and Turks seized on the American steamer *China*, on Feb. 18, 1916, would be released and would leave Sydney, N. S. W., Sept. 28, 1916. N. Y. Times, Sept. 23, 1916.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN 1

British trade after the war. Measures for securing the position after the war of certain branches of British industry. Subcommittee of the Advisory Committee to the Board of Trade on Commercial Intelligence with respect to. Summaries of evidence. (Cd. 8275.) 5d.

Defense of the Realm Regulations made to May 23, 1916, reproduced in consolidated form, with notes, table of regulations, and orders made under the regulations. 2d edition. 8d.

Economic conference of the Allies. Recommendations of the, held at Paris June 14, 15, 16, and 17, 1916.

International Convention for the Safety of Life at Sea. Order in Council further postponing the coming into operation of the Merchant Shipping Convention Act, 1914, until January 1, 1917. May 23, 1916. (St. R. & O. 1916, 385.) 1½d.

Internment camp at Ruhleben. Report by Dr. A. E. Taylor on the conditions of diet and nutrition in the. (Cd. 8259.) 2d.

Mails. Examination of parcels and letters. Note from the United States Government regarding the. (Cd. 8261.) 1½d.

Prisoners of war, British and German, in Poland and France. Correspondence respecting the employment of. (Cd. 8260.) 1½d.

Prisoners of war, sick and wounded. Correspondence with the United States Ambassador respecting the transfer of British and German prisoners to Switzerland. (Cd. 8236.) 1½d.

Trading with the Enemy Statutory List Proclamation No. 3, May 23, 1916. (St. R. & O. 1916, 320.) 2½d.

- ——. Order in Council making exceptions and adaptations in the Trading with the Enemy Acts, 1914 to 1916, and the Customs War Powers Acts, 1915 and 1916, in their application to persons or bodies of persons mentioned in the Statutory List. May 23, 1916. (St. R. & O. 321.) $1\frac{1}{2}$ d.
- ——. Orders in Council varying the Statutory List. June 2 June 15, 1916. (St. R. & O. 1916, 346, 369.) 11/3d. each.
- ¹ Official publications of Great Britain and many of the British colonies may be purchased of Wyman & Sons, Ltd., Fetter Lane, E. C., London, England.

UNITED STATES 2

Armed merchant vessels, Memorandum of Department of State showing views of Government in regard to status of, in neutral ports and on high seas. April 27, 1916. 7 p. (S. doc. 420.) Paper, 5c.

Bolivia, agreement effected by exchange of notes between United States and, terminating Art. 34 [relating to deserters from vessels] of treaty of commerce of May 13, 1858. Signed, October 4-5, 1915. (Treaty series, 32A.)

Claims, Adjustment of international pecuniary. Address delivered at the Lake Mohonk Conference on International Arbitration by Edwin M. Borchard. May 18, 1916. 8 p. (S. doc. 455.) Paper, 5c.

Dominican Customs Receivership, Report of ninth fiscal period, under the American-Dominican convention of 1907, Jan. 1-Dec. 31, 1915, together with summary of commerce March 22, 1916. 60 p. il. Bureau of Insular Affairs.

Haiti, Treaty between the United States and, regarding the finances, economic development and tranquility of Haiti. Signed Sept. 16, 1915. (Treaty series, 623.) State Dept.

International High Commission, Address delivered before conference of, at Buenos Aires, April 4, 1916, by W. G. McAdoo, Secretary of the Treasury of the United States. 8 p. (S. doc. 438.) Paper, 5c.

International Joint Commission on Boundary Waters between United States and Canada. List of decisions, reports, etc. 11 p. Paper, 5c.

International Law Topics, documents on neutrality and war, with notes, 1915. By George Grafton Wilson. 122 p. Cloth, 35c. Naval War College.

Ireland, Report relative to safety and well-being of American citizens in, in response to resolution. June 13, 1916. 2 p. (S. doc. 462.) State Dept.

League to Enforce Peace, Address of President of United States, at meeting of, May 27, 1916. 6 p.

Merchant Marine. Report to accompany H. R. 15455 creating shipping board, naval auxiliary, merchant marine, and regulating carriers by water engaged in foreign and interstate commerce of United States. May 9, 1916. 74 p. (H. rp. 659, pt. 1.) Paper, 5c.

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

——. Minority views. May 12, 1916, 7 p. (H. rp. 659, pt. 2.) Paper, 5c.

Mexico. Note of Secretary of State of United States to Secretary of Foreign Relations of de facto Government of Mexico, June 20, 1916. 20 p. (H. doc. 1237.) Paper, 5c. State Dept.

Naturalization. Declarations of intention to become citizens of the United States, Report to accompany S. 4594, to validate certain. May 31, 1916. 5 p. (S. rp. 508.) Judiciary Committee.

Neutrality and foreign relations, Recommendations by Attorney General for legislation amending criminal and other laws with reference to. 1916. 32 p. Justice Dept.

Pan American Scientific Congress, Second, Final Act and interpretative commentary thereon prepared by James Brown Scott. 516 p. [This volume contains, in addition, the program as finally carried out, the list of scientific institutions, associations, and learned societies participating in the Congress, and names of persons invited to take part in the proceedings.] State Dept.

Panama Canal. Hearings on estimates for construction and fortification of. [Contains Slides at Panama, by George W. Goethals.] 199 p. House Appropriations Committee.

Panama Canal Zone, Exclusion of undesirable aliens from. Report to accompany S. 6447. June 29, 1916. 4 p. (S. rp. 564.) *Interoceanic Canals Committee*.

Radiotelegraphy. Recommendations of Navy Department on subject of radio communication between countries of Western Hemisphere submitted for consideration of interested Governments. March 11, 1916. 8 p. State Dept.

GEO. A. FINCH.

JUDICIÁL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

THE FENIX 1

Imperial Supreme Prize Court in Berlin

Decided December 17, 1914

In the Name of the Empire!

In the prize case re the Russian steamer Fenix from Helsingfors, the Imperial Supreme Prize Court in Berlin, on December 17, 1914, decided as follows:

The appeal of the claimant is refused.

The costs of the appeal proceedings are awarded to the claimants.

THE FACTS OF THE CASE

On August 2, 1914, at 11:30 a.m., the steamer Fenix, hailing from Helsingfors (Finland), was, after war had been declared by Germany against Russia on August 2, captured not far from the mouth of the Elbe, between light-ship A and buoy A, about 100 km. distant from Hamburg, by a German torpedo-boat and soon after taken into Hamburg. After due compliance with the formalities of the Prize-Office and issue of the summons prescribed in Sec. 26, par. 1, of the Prize Court Rules, two claims were entered by the firm H. M. Gehrckens, of Hamburg, one in its own name on account of certain alleged outlays in behalf of the vessel and its crew made subsequent to the seizure, and the other in the name of the shippers—Helsingfors Angfartygs Aktiebolag—in Helsingfors, the ship-owner petitioning that the seizure be declared unjustified.

The Prize Court in Hamburg rendered judgment on Sept. 26, 1914, in which, among other things, it was held that:

The seized steamer *Fenix* is to be condemned.

¹ Translated from the Hanseatische Gerichtszeitung Hauptblatt, Hamburg, No. 9, March 11, 1915, and the Zeitschrift für Yolkerrecht, Vol. IX, No. 1, p. 103.

The claims of the owner and the firm H. M. Gehrckens are rejected. The costs of the legal proceedings must be borne by the claimants.

From this decision, which was delivered on October 8, 1914, the petitioners, in a written statement presented on October 13, 1914, made an appeal and justified the same on October 16, 1914. The petition is made:

- 1. In the name of both claimants: That, under a stay of execution of the appealed judgment, the steamer *Fenix* be released.
- 2. In the name of the claimant H. M. Gehrckens as an alternative: To modify the judgment to the extent of declaring that the condemnation of the steamer is allowed only on payment to the claimants of the amounts specified in the claim of the firm H. M. Gehrckens.

The Imperial Commissioner before the Supreme Prize Court moved that the appeal be dismissed. In the proceedings before the court of appeal, the representative of claimants proved the legal remedy and pleaded as follows:

- I. Re the shipper's appeal.
- 1. The 6th Convention of the Second Hague Peace Conference (October 18, 1907) ought to have been taken into consideration in the Prize Court's judgment, even although only Art. 1, par. 1, was mentioned in the Prize Regulations; for the Prize Regulations founded on the Kaiser's powers as Commander in Chief do not govern the whole of prize law, especially those cases which do not arise upon the high seas.
- 2. Neither is the application of the above mentioned convention excluded by the fact that Germany withheld consent to some of its provisions, for Russia did that also. Likewise the fact that Servia and Montenegro did not ratify the convention stands just as little in the way of its application in this case, since they are not maritime states, and Art. 6 of the convention must be taken to mean that it shall not apply only if the belligerents, being maritime states, are not parties to it.
- 3. Nor is the application of the convention dependent upon the granting [by the belligerent governments] of days of grace for departure. This can be more definitely ascertained from the proceedings of the Second Hague Conference relating to this convention and the declarations made by the representatives of the various contracting states, parts of which were quoted by the representative of the claimants.
- 4. Concerning the interpretation of the law to be applied, the representative of the claimants pleaded, that Art. I, par. 2, and Art. 2 of the

above mentioned convention must not be understood in too narrow a sense, and above all not to the effect that only ships which reached a hostile port or its immediate neighborhood before the outbreak of war should be exempt from the prize law. The whole convention is furthermore merely the outcome of the practice generally followed since the Crimean War, according to which not only those ships which were already in a hostile port at the time of the outbreak of the war, but also such as were on the way to such a port should be granted time for departure. This was laid down by French and Russian declarations in the year 1854, as well as by French and German declarations in the war of 1870-71. The United States of America likewise agreed to it in 1898 in the war against Spain. This practice, as is plainly evident from the words of the preamble, the convention in question intended to confirm, and it was only due to a mistake in drafting, which it is true tends to obscure the principle upon which par. 2 is based, that the respite for departure, the desirability of which is expressed, can be taken into consideration in the case of ships bound for a hostile port only after their arrival. The circumstance that Germany withheld its consent to Art. 3 cannot be taken to mean a limitation upon Art. 2, since Germany, according to the explanations of its representatives at the Conference, wanted to go so far as to make the practice obligatory.

5. Finally the claimant's representative contended that at the time it was captured the *Fenix* was already in the Elbe and therefore within German jurisdiction. A vessel is certainly entering a port (*entrant dans un port* as the original text of the convention reads) when, after passage through the national waters, she reaches the inner territory of the hostile state. This is also the meaning of the word "anlaufen" used in the German translation, which is not identical with "einlaufen."

II. Re the appeal of the firm of Gehrckens.

In this case the representative of the claimants maintained the arguments brought forward by him in the first instance, and particularly referred to the fact that even if the amounts paid out by the firm of Gehrckens could not be awarded to them as costs in the prize court proceedings, the firm had certainly acquired a bottomry right on account of the payments made on the authority of the captain of the Fenix, the validity of which must be reserved in the judgment pronouncing the seizure of the ship. The judge of the lower court did not enter at all upon this point.

The Imperial Commissioner contradicted these arguments, and re-

garding the interpretation of Art. 1, par. 2, of the convention, referred to the fact that this provision was construed very narrowly by the English Prize Court, as evidenced by the case of the German vessel $M\bar{o}ve$, which was captured in the inner waters of the Firth of Forth, because it was held that she was at sea there. The English Prize Court confirmed this holding.

REASONS FOR THE DECISION

The appeal is in order as to time and form and is justifiable, but without foundation.

The Court of Appeal agrees with the claimants in presuming that the stipulations of Convention No. 6 of the Second Hague Conference must be taken into consideration in the case under review, although they have not been expressly included in the Prize Regulations. Why this was not done need not be discussed. At all events, the convention named is a state contract ratified by the German Empire, and published in the Imperial Legal Gazette, and as such it must be taken into consideration by the prize courts.

Likewise, the fact that Germany refused to agree to Art. 3 of the convention does not prevent the consideration of the remaining parts. Neither in the opinion of the Court of Appeal, is the granting [by the belligerent governments] of days of grace for departure necessary for the application of the convention, since such a limitation upon its applicability is not evident from the convention itself; but, on the contrary, Art. 2, par. 1, 2nd alternative, refers to a ship which is not allowed to leave, in which case, therefore, there can be no question of the granting of days of grace for departure.

Finally, the circumstance that the belligerent states Servia and Montenegro did not ratify the convention raises no doubt, for the reasons advanced by the claimants, concerning its applicability to the case under review; but it may be left undecided whether the dispositions of the convention would not have to be taken into consideration as generally acknowledged principles of international law, even if they were not brought into question by virtue of a treaty.

The Court of Appeal, however, can not agree with the claimant's arguments concerning the interpretation and wording of Art. 1, par. 2, of the convention.

First, the claimant's arguments may be summed up to the effect ² Printed in this JOURNAL for April, 1915 (Vol. 9), p. 547.

that in several wars in the second half of the preceding century the belligerents agreed upon and followed the practice of not molesting a vessel which was bona fide bound for a hostile port, and treated it in the same manner as a ship which at the outbreak of hostilities was actually within a hostile port; and that this practice ought to have been expressly laid down in the dispositions of the 6th Convention.

With certain limitations this may be true. It in no way alters the fact, however, that Germany reserved Art. 3 of the convention, according to which ships at sea which are without knowledge of the outbreak of hostilities do not come under the protection of the convention, which applies only to vessels actually within the hostile port at the commencement of hostilities (which does not come into question here) or which "touch at" such a port after the outbreak of hostilities.

Considered from a purely grammatical standpoint, "einen Hafen anlaufen" (to touch at a port) means the same as "in einen Hafen einlaufen" (to enter a port). It may be granted, however, that at times the expression is used in a somewhat wider sense. In order correctly to understand the sense in which it is used in this convention, it is necessary to consider the original French text, since this alone is decisive upon a question of interpretation, the convention having been drawn in that language. "Entrant dans un port" however, as it stands there, means to enter a port. There is no necessity to construe this clause of the convention more widely than the wording requires, for even thus understood, a ship bona fide approaching a port does not lose the advantages of the convention, since even if she does not come under Art. 1, par. 2, she does come under the provisions of Art. 3. Accordingly, the convention comprises two, not three, categories of ships, as the claimants take it, viz., ships which at the outbreak of hostilities were actually within a hostile port or (what is considered as the same thing and therefore so treated in the same article) which enter it, and ships that are outside the port and therefore within the hostile state's territorial juris-These latter are considered as at sea (Art. 3). It would be arbitrary to consider within the first category ships which are bound for a hostile port and about to claim the right of asylum within the hostile state, and such a holding must be rejected if for no other reason than the difficulty of drawing a definite line of demarcation. Germany's willingness to make obligatory the granting of days of grace for departure has nothing to do with the question as to what ships are to be considered as at sea and what as touching a port.

That this interpretation, drawn from the French wording of the disposition in question, should, according to the general opinion, have been expressed in the convention is also evident from the protocol of the convention. In the reports of the Fourth Commission to the whole Conference, it is stated (according to Dr. Niemeyer, *Urkundenbuch zum Seekriegsrecht*, II Abb. p. 473) with regard to the disposition in question:

L'alinéa 2 vise le cas du navire entrant, qui a quitté son dernier port de départ avant la guerre et qui ignore l'ouverture des hostilités aù moment où il arrive dans le port ennemi.

And the official English text of the convention, which was laid before Parliament together with the original text, reads, as far as it applies here:

The same principle applies in the case of a ship which has left its last port of departure before the commencement of the war and has entered a port belonging to the enemy while still ignorant that hostilities had broken out.

From this it is clear beyond all doubt that Art. 1, par. 2, of the convention is to be read still more narrowly than was done by the judge of the lower court, namely, that it refers only to those ships which, without knowledge of the outbreak of hostilities, actually arrive at and enter a hostile port. So long as they are outside the harbor proper, even if in its immediate neighborhood, they do not come under the protection of Art. 1. par. 2, but are, on the contrary, for the purposes of prize law, to be treated as at sea, and so fall under Art. 3. Since this article has not been accepted by Germany, and the hostile ownership of the S. S. Fenix has been proved, she was rightly captured and is consequently subject to condemnation. Moreover, the British Prize Court in its 12th session when the case of the Mowe was heard, likewise gave a similar interpretation of the regulation in question. That vessel was on a voyage from Norderney to Bo'ness in the Firth of Forth, within which it touched at Morrison's Haven, on the 4th August, and on the following morning sailed for Granton "higher up the Firth of Forth." Thereupon the ship was captured and declared by the Prize Court to be a good prize. In the report of the case before the Prize Court, it is stated (Morning Post of Nov. 1, 1914):

The condemnation of the vessel was asked for by the Crown on the ground that when captured she was not within the boundary of any port in the sense in which the word was used in the Sixth Hague Convention of 1907. * * * The president had no hesitation in finding that she was captured at sea and not seized in port.

For these reasons, the legal claim of the ship-owners is denied.

The appeal of the firm of Gehrckens likewise appears unfounded. In so far as this claimant demands reimbursement of specified outlays as costs of the Prize Court proceedings, the claim is to be refused, since costs of legal proceedings cannot consist of outlays of third parties, particularly outlays which have nothing to do with the actual case. If the outlays were really made in the interest of the prize the claimants must prove them in the manner prescribed by the Prize Regulations. The firm of Gehrckens bases its claim furthermore on the fact that because of outlays made on behalf of the ship's captain, it had acquired a bottomry right on the ship, the proving of which was reserved in case of condemnation. Here, too, may be left out of consideration the question whether the firm on account of its outlays, or a part thereof, actually acquired a real right in the S. S. Fenix, since the bottomry right would at once become void upon the condemnation of the ship. Condemnation, according to prize law, is an original method of acquiring possession, an occupatio jure belli, which, according to generally acknowledged principles of international law, gives to the occupant the ownership of the object seized free of every encumbrance. The decision in the case of the Maria Glasser, rendered by the English Prize Court at its third session after mature consideration of the practice of other prize courts, shows that the English Prize Court also takes this point of view. (The Times, 17th September, 1914).3 In that case it was a matter of a mortgage acquired by a neutral before the capture of the ship, and the consideration of the claim of the neutral mortgagee was denied on the ground that according to the principles of prize law, the rights of third parties in a captured ship cannot be recognized. It is also hinted in the decision that the case would not have been adjudged differently if the mortgagor had been a British subject.

In the present case the bottomry right is said to have arisen after the capture of the ship. According to the opinion of the Court of Appeal, however, this makes no difference in adjudging such bottomry right, since under prize law it is void as against the legal effect of seizure. The same is true of an alleged bottomry creditor in his capacity as citizen of the Empire. It is not evident why an exception should be made to the above mentioned principles in favor of citizens of the Empire.

Accordingly, both appeals are rejected. The awarding of the costs follows according to Sec. 37 of the Prize Regulations.

³ Printed in this Journal for April, 1915 (Vol. 9), p. 531.

THE ELIDA 1

Imperial Supreme Prize Court in Berlin

Decided May 18, 1915

In the prize case re the Swedish steamer Elida, home port Karlsham, the Imperial Supreme Prize Court in Berlin, in its session of May 18, 1915, cancelled the judgment of the Prize Court at Kiel of December 8, 1914, and declared the claim for compensation to be fully justified, returning the case to the court of first instance to fix the amount of the indemnity. The decision upon the costs is reserved for the final decree.

On October 13, 1914, the Swedish S. S. Elida, with a cargo of wood (rafters), bound from Kago to Hull, was captured by a German torpedo boat near Trelleborg and taken into Swineminde. The bill of lading read "to order"; the wood is said to have been sold by V. Svensson & Co. A. G. of Stockholm to Roberts, Cooper & Co. in Hull. The owner of the steamer, J. Ingmarssen of Stensnäs, avers that the seizure of the ship and cargo was illegal and claims damages. The Prize Court at Kiel decided that the steamer and cargo should be released, but that sufficient reasons existed to justify the seizure and that the claim for compensation should be dismissed.

The appeal from this decision is sustained.

The illegality of the seizure is first of all based on the fact that it took place within the zone of neutrality claimed by Sweden, *i. e.*, within four miles of the Swedish coast. Whether this was really the case is disputed, whilst it is certain that the seizure took place outside the three mile limit. In any event this is of no importance, since this objection was properly dismissed by the judge.

It is true that a considerable number of states have extended by national law their territorial jurisdiction beyond the three mile limit, either generally or with regard to certain legal rights. This particularly applies to Sweden and Norway, which extended their national waters to a distance of four miles. A number of other states even went much further in this respect. But a special international title, valid in relation to the German Empire, and therefore to be taken into account by

¹ Translated from the Hanseatische Gerichtszeitung Hauptblatt, Hamburg, No. 39, October 7, 1915, and the Zeitschrift für Völkerrecht, Vol. IX, No. 1, p. 109.

the prize court, does not exist, for up to the present time the Swedish claim has been recognized only by the Norwegian Government. According to official information from the German Foreign Office, Germany especially in the course of the discussions concerning this matter which took place in 1874, did not accept Sweden's point of view but treated the question of national waters as an open one, while England insisted upon the three mile limit. Similarly in 1897, when the Swedish Government addressed a communication to the German Legation at Stockholm concerning the fishery jurisdiction, the German Government restricted itself to raising no objection against Sweden's claim to a four mile boundary for the fishery and the question of the neutralization of this marine area in case of war was not thereby affected.

Therefore, under these circumstances, the decision must rest upon the basis of the German Prize Regulations, which in No. 3a forbids the application of prize law within a zone of only three nautical miles from the low water mark of neutral coasts. The Prize Regulations contain the principles laid down by the Kaiser as Commander in Chief within his Imperial jurisdiction for the practice of prize law pertaining to naval warfare, and are, therefore, primarily law not only for the Navy, but also for the inland authorities, particularly the prize courts, in so far as they have to pass upon the legality of the actions of commanders at sea falling within the prize law. International law only lays down rights and duties as between different states. The prize courts, when judging of the legality of prize actions, can take general international principles only into account when the Prize Regulations contain no instructions and, therefore, tacitly refer to the principles of international law. Therefore, the question whether an instruction of the Prize Regulations agrees with general international law is not for the prize court to If a contradiction in this connection is asserted, the point in controversy is to be settled in another manner. Thus far this conception also agrees with the legal opinion of Professor Dr. von Liszt, produced by the claimants.

Contrary to this opinion, however, the Supreme Prize Court further is of the opinion that the instruction in question of the German Prize Regulations in no way violates the general principles of international law. Heretofore, the maritime boundary of states has been generally recognized in theory and practice as being three nautical miles distant from the coast. Originally, it was based on the carrying distance, corresponding to the gunnery technique of those times, of ships' and coast

guns. It is true that now-a-days this reason is no longer applicable. Here however the axiom cessante ratione non cessat lex ipsa applies, and although numerous proposals and opinions have been put forward with regard to a different delimitation of the national waters, it cannot be asserted that any other method has in practice met with the general concurrence of the maritime states. This is also true of the view put forward in the above mentioned opinion, according to which each individual state is entitled to extend, by means of independent regulations, the boundary of its national waters beyond the three mile zone as far as gun range, the former limit nevertheless to be regarded as a subsidiary international boundary. With the range of present day guns this would lead to quite intolerable conditions, and give to single states the possibility of including within their national territory extensive tracts of the open sea the freedom of which is in the interest of all maritime states. 'To a certain extent this is also acknowledged by Liszt in his opinion, for according thereto the regulation of the individual state is not alone sufficient: the absence of objection on the part of other states is also required. Thereby in reality the permissibility of an extension of the territorial waters is founded not so much upon the independent regulation by the single state, as upon the supposition of a tacit acknowledgment of such an extension by the other states. A mere failure to object, however, is not identical with a positive concurrence of the nations. Furthermore it must be remembered that even if the exercise by a maritime nation of certain official functions, such as those of the health and customs authorities, is tolerated beyond the three mile zone, this by no means represents a concession to the effect that in all other respects the waters in question are included within the territorial jurisdiction. Accordingly, in more recent international agreements to which a number of maritime states were parties, as, for instance, in the agreement of May 6, 1882, for the police regulation of the North Sea fisheries. and in the convention of October 29, 1888, for the neutralization of the Suez Canal, the three mile boundary was recognized as the standard. Likewise, according to official information from the Foreign Office, in the second session of the International Congress for the Protection of Submarine Cables, held at Paris on October 18, 1882, Germany's representative explicitly declared, without meeting with opposition, that by the term "coastal waters" a zone of three miles was to be under-Furthermore, according to the same official information, the British Government during the negotiations in the year 1911 with regard to the holding of an international congress for the regulation of the question of coastal waters, decidedly adhered to the three mile zone; and, accordingly, even in the present war, it had Admiral Craddock inform the Government of Uruguay that it would not recognize the claims of Uruguay and Argentina to an extension of the territorial waters beyond the three mile zone. It can, therefore, be still less assumed that this boundary has been supplanted by another generally acknowledged international regulation.

In the case under consideration, however, the legality of the seizure should have been denied for another reason.

In agreement with the court of first instance, it is to be taken that the wood,—which after the release of the ship and cargo was sold in Luebeck—was not contraband. In this respect only item 9 of the List of Conditional Contraband, as it was in force at the time of seizure, would come into question, namely, "Material for Fuel (Greases)." The cargo consisted of beams, i. e., trunks cornered by means of the hatchet, in this case up to 22 feet long, and 4x4 up to 8x9 inches wide, part of the tenon ends being unhewn. The experts Homann and Bockmann, it is true, estimated their value as small, i. e., M. 15 per cubic meter, whereas they valued firewood at M. 8 the cubic meter. The expert Liebnitzky, on the contrary, assessed the value at M. 25, and at the same time pronounced the wood to be squared timber, such as is used in large quantities in Germany for building purposes, particularly from Vorpommern westward. The experts who viewed the wood during its discharge at Luebeck agreed with this opinion in so far as to declare the cargo to have undoubtedly consisted of squared building wood. In accordance therewith at the sale in Luebeck the wood brought the price of M. 28. 58 the cubic meter.

Without doubt therefore it was not firewood, but timber.

When the Declaration of London in Art. 24 and the Prize Regulations in No. 23 speak of fuel, this must be taken to mean such material as, according to the conditions of price and transportation, is really used for the purpose of fuel, since it is generally obtained prepared and transported to its destination for this object. Particularly wood for fuel, firewood, naturally differs from timber of every description, since through the preparation of the former, the latter has generally risen considerably in value. On the other hand, it must be taken into account that the prize court instructions are designed for the event of war, and must be therefore read in such a way as to exclude the possibil-

ity of evasion. It is not, therefore, merely a question of the customary designation of the trade, for, if such were the case it would be possible, by means of a preparation which entailed no extra costs, or at least insignificant ones, to give to the wood a character which would deprive it of its contraband nature without its use as fuel producing a useless loss of important economical values. Even firewood requires a certain treatment or preparation, the cost of which is hardly lower than that of inferior kinds of timber, particularly timber for mines. A fine line of distinction is not drawn here. It was, therefore, quite in accordance with the legal position created by the Prize Regulations, when the German Foreign Office informed the Swedish Government in September, 1914

that all kinds of unmanufactured or crudely manufactured woods were regarded as conditional contraband, as they could be used as fuel and, according to circumstances, were actually used as such, also timber for mining and paper wood, crude or with bark removed; but, on the contrary, not such kinds of wood as had on account of hand or machine treatment, risen considerably in value so that their use as fuel would mean the destruction of the economic values expended on them,

and when subsequently,—quite in accordance with what is there said,—the Prize Regulations were explained by the proclamation of November 17, 1914, in the Imperial Legal Gazette. It is, however, clear that wood like the kind in question cannot be brought even under the category of wood for fuel as thus elucidated. This also agrees with a declaration given to the Swedish Government through the German Ambassador at Stockholm on August 28, 1914, according to which planks, sawn beams and cornered building wood would not be considered as contraband.

So far the disputed decision is confirmed, but it cannot be conceded that the first judge was correct in deciding with regard to compensation that the wood in question was a doubtful case of classification, and that therefore sufficient reason existed for seizure. The ship's commander must have seen, and did see, that it was not a case of firewood. He also could not have been in doubt that it was not timber for mines. According to the Prize Court, the cargo consisted of beams, and the seizure was made because the "cargo could be used as timber for mines" and, further,—"because the nature of the wood gives rise to the supposition that it was to be used as timber for mines." This was incorrect. After all, every kind of wood can be used as fuel. It cannot therefore be a question of this possibility. It is the objective character of the wood, as specified above, which is actually decisive. Therefore,

even if it be granted that mining timber is fuel in the sense of the Prize Regulations, cornered wood must not be declared fuel simply because it might perhaps be used as timber for mines. The officer may have made an excusable mistake, but it was not one concerning the nature of the cargo. If he nevertheless decided to seize it, this was because he interpreted the Prize Regulations incorrectly, and inadmissibly extended the conception of fuel. Incorrect interpretation of the Prize Regulations, however, can never be regarded as sufficient ground for seizure. Whether the ship's commander is at fault or not, is not the question.

Wherefore, the petitioner's claim, in so far as he, in his capacity of owner of the *Elida*, has suffered loss, appears fundamentally justified, and it need not be inquired into whether, as claimant asserts, these or other presumptions for seizure were also wanting.

THE GLITRA 1

Imperial Supreme Prize Court in Berlin

Decided September 17, 1915

In the name of the Empire: In the prize case of the English steamer *Glitra*, home port Leith, the Imperial Supreme Prize Court in Berlin, in its session of July 30, 1915, rendered the following judgment:

The appeals of the claimants named under Nos. 9 and 12 of the disputed judgment are rejected as inadmissible; the appeals of the other claimants are rejected as unfounded. The costs of the appeal are to be borne by the claimants.

REASONS

On October 20, 1914, the steamer Glitra, belonging to the firm of Salversen & Co., of Leith, and bound with a cargo of piece goods from Leith to Stavanger, was captured by H. M. Submarine U 17 in 50° 4′ N. Lat., and 50° 14′ E. Long., and sunk, with her cargo, after the crew had left the ship. In reply to the request of the Prize Court, according to Sec. 26 of the Prize Court Rules, the 13 parties mentioned in the disputed judgment as possessing interests in the cargo, claimed compensation on account of the destruction of their property. The claimants are partners of Norwegian firms; claimant No. 2 is a Danish Insurance Company, representing the rights of its Norwegian insurer.

¹ Translation from copy of decision furnished by the Department of State.

The Prize Court decided that the ship sunk was liable to seizure, and rejected the reclamations.

The appeal taken against this judgment is unfounded.

In the first place the Prize Court ascertained that without doubt the Glitra was an English ship, and that according to the circumstances the destruction of the ship was necessary in order to ensure capture. It left undecided the question, whether the goods for which claims for indemnification were entered belonged to neutrals, because it came to the conclusion that even if this were proved in the affirmative, a claim for compensation did not exist. It is stated as the reason for this that the question under discussion is not decided either in the Prize Regulations nor in international agreements, namely, in the Declaration of London, as is clear from the document itself and the history of its origin. Opinions are divided. In the French memorandum presented to the Conference of London it is declared that the owners of neutral cargoes have no claim for indemnity, because if the captor considers the destruction of the prize as necessary for military reasons it is an act of war, while the English memorandum acknowledges the claim, if it is not for contraband, because a non-prohibited cargo on board a hostile ship is not liable to seizure. The basis leading for the preparatory discussion of the conference of London

Considering the principle that neutral goods shipped on vessels flying an enemy's flag are not subject to seizure, is the owner of certain goods forming part of the cargo of a vessel destroyed, entitled to claim indemnity, or is the destruction of the ship in such cases an "act of war" which does not obligate the belligerent nations to the payment of an indemnity?

was debated, without an agreement being reached. Quite the predominating point of the debates was the question of the admissibility of the destruction of neutral vessels which were liable to seizure. In mitigation of such a case, Germany was in favor of allowing the neutrals a right to indemnity for goods not liable to seizure.

Japan only expressed an opinion regarding neutral goods on board a destroyed hostile vessel, namely, in conformity with the standpoint taken by England. There is nothing to support the assertion that Germany nevertheless, under these circumstances, was in favor of laying down as a principle of prize law, that in case of the destruction of a hostile ship the owner of the neutral cargo should have a claim for compensation. An argument in favor of this might at the most be found in

par. 114 of the Prize Regulations as it is there apparently presumed that when a vessel is destroyed compensation is always to be given for the destruction at the same time of the innocent portion of the cargo. This argument is, however, not sufficiently convincing, for it is evident that par. 114 treats only of the destruction of neutral ships. Preceding and succeeding provisions of the Prize Regulations also refer to such a case.

This is to be agreed to in the issue.

The question is whether in the case of the legal destruction of a hostile ship, compensation is to be made for the goods of neutrals which are lost with the ship. It is clear that an express instruction upon this point is contained neither in the Prize Regulations nor in the Declaration of London. But the Prize Regulations do not state anything about it even indirectly. The claimants seek to find such an instruction in par. 114 of the Prize Regulations. The judge of the lower court was right in rejecting this contention, even if his reasons are not always to be agreed with. The commander is therein instructed, before he decides upon the destruction of a ship, to consider whether the injury to be done to the enemy balances the compensation to be paid for the destruction of the innocent portion of the cargo. At the same time reference is made in brackets, amongst other things, to par. 18, which deals with the capture of hostile ships and directs what portion of the cargo is likewise liable to seizure. This indeed conveys the idea that the compiler of the Prize Regulations takes in par. 114 the standpoint that even in the case of the destruction of a hostile vessel indemnity is to be paid for the innocent portion of the cargo. It must also be admitted that this reference confused the holding of the lower court, if it presumed that par. 114, as well as the preceding and following regulations, refer only to the destruction of neutral ships. Nevertheless, the importance which the claimants seek to attach to it cannot be given to this paragraph. Interpreted according to their contention, it would to a certain extent contradict what the Prize Regulations prescribe in the paragraph immediately As is clearly shown there, the Prize Regulations do not adjoining. prescribe that compensation is to be granted in every case for the destruction of goods not liable to seizure, since in the case of the legal destruction of a neutral ship compensation is only prescribed for the destruction at the same time of innocent goods, in as far as they are neutral goods, but not for hostile goods, which, under the protection of the neutral flag, are likewise not liable to seizure. In addition, there are also hostile vessels which are not liable to capture, and therefore are not to be seized; so that if by chance,—for instance, on account of a pardonable error—such a vessel should nevertheless be destroyed, the question might arise whether on account of the compensation to be paid for values destroyed with it, a distinction should not be made between neutral and hostile property, for which reason it might seem advisable to instruct the commanders of men-of-war to take into account such considerations as are laid down for them in par. 114. Above all, it is of paramount importance that par. 114 be not sedes materiae, and therefore, even supposing that the compiler of the Regulations was of the opinion that in the case of the legal destruction of a hostile ship claims for compensation could be sustained for neutral goods, it would be incorrect to regard his opinion as a definitive decision of this at least doubtful, and at any rate disputed but still open question.

As Wehberg,² correctly points out, Heilfron ³ goes too far when he wishes to give to the Prize Regulations the importance only of a command given by the Kaiser to the commanding officers of the Navy. The Prize Regulations contain to a great extent positive law. But with regard to the precise question under dispute, Heilfron's characterization is correct. This par. 114 is indeed only a command to the commanders of men-of-war. The Commander-in-Chief but not the legislator speaks. He does not desire to make substantive law and does not do so.

Thus obliged to revert to the most general legal principles in connection with the general laws of war, it is absolutely evident that a claim in favor of the neutrals does not exist, if the destruction of the prize was justified by the circumstances. (Par. 112, Prize Regulations.)

The seizure and capture of hostile ships is an admissible act of war against other states which is sanctioned by international law. Claims for compensation either from members of hostile or neutral states cannot arise in every case. It is true that according to Article 3 of the Declaration of Paris, neutral property (which is not contraband) cannot be seized even on hostile ships. Therefore, it is not even liable to seizure if the ship is brought into port. But there can be no question of the parties interested in the cargo having a claim for compensation on account of the injury caused by the seizure of the ship, the interruption of the voyage, or the conveyance to a different destination to what was intended. There is also just as little claim for compensation if the goods themselves suffer injury in consequence of the seizure of the ship; for

² Österreich. Zeitschrift für öffentliches Recht, II, 3, p. 282.

³ Jur. Wochenschrift, 1915, p. 486.

instance, if on account of an accident they are lost during the subsequent voyage of the prize. Since seizure is a legal act, there is no legal basis whatever upon which to found an injury to the goods, which the neutrals have, moreover, themselves caused by entrusting their property to an endangered ship. Therefore, since seizure is a legal act of war, there is no legal basis for establishing the injury to the goods, even if they are lost through an act of war directed against the ship when owing to the circumstances such an act must necessarily also be directed against the cargo.

The legal question which here arises can also arise under the conditions of land warfare. It can and may not seldom happen, that, for instance, during the bombardment of a fortified or defended place, the property of neutrals also suffers injury. But even in land warfare, in which private property is much more protected than in war at sea, there can be no question in such a case of a liability on the part of the belligerent states to indemnify even the neutrals. Compare Article 3 of Convention IV of the Second Hague Conference; Geffcken by Heffter, Völkerrecht, Sec. 150, note 1 (incorrect, at least insufficient, viz., the text by Heffter); Calvo, Droit international, IV, 2250–2252; Bonfils, Völkerrecht, 1217; Bordwell, Law of War, p. 212.

In regard particularly to the conditions of naval war, however, Article 3 of the Declaration of Paris gives protection neither in general nor specifically to neutral property against the actions of the belligerents due to the necessities of war. The purpose of Article 3 of the Declaration of Paris was to extend protection to neutral property in an enemy ship which, under the prize law as it existed prior to the Declaration, was subject to capture. What the necessities of war demand must be allowed to take place, whether neutral property is on board the ship or not. If, according to Article 2 of the Declaration of Paris, the neutral flag protects enemy property, this does not mean, that, vice versa, neutral property protects the enemy ship, and protects it, indeed, not only against destruction but also in many cases against every exercise of prize law.

As far as can be seen up to the most recent time, no one has ever disputed this holding. Compare, Entsch. des franz. Conseil d'Etat of May 21, 1872 in Dalloz, Jurisprudence générale, 1871, III, No. 94, in the prize case of the Ludwig and Vorwærts; Dupuis, Le droit de la guerre maritime, 1899, p. 334; de Boeck, De la propriété ennemie privée sous pavillon ennemie, Sec. 146; Bordwell, Law of War, p. 226; Wheaton, International Law, 4th ed., p. 507, Sec. 359e; Oppenheim, International

Law, II, 201 ff.; Calvo, Droit international, V, 3033, 3034; Hall, International Law, 5th ed., p. 717 f.

The claimants' assertion that the decision of the French Prize Court in the case of the Ludwig and Vorwerts was almost universally attacked in literature, has, apart from the quotations from the recent literature (Wehberg and Schramm; the quotation from Hall, p. 187, see above, is incomprehensible) remained unproved and must be regarded as incorrect. Only very recently, especially in Germany, has there developed the theory that generally in the case of the destruction of innocent goods the highest principle prescribes the obligation of granting compensation absolutely or in so far as innocent goods may have been destroyed, and absolutely or in so far as neutral goods may have been destroyed. Compare Schramm, Prizenrecht, p. 338 f.; Wehberg, Seekriegsrecht, p. 297 Anm. 3 & 4, and Österr. Zeitschrift für öffentliches Recht, op. cit.; Rehm, Deutsche Juristenzeitung, 1915, p. 454.

In consequence, the general obligation of granting compensation is regarded as a foregone conclusion, without giving any reason to support it, and when it is subsequently attempted to bring forward a reason, it does not, when compared with the foregoing arguments, appear convincing. Even the argument that land warfare must be confined locally to the territories of the belligerents while the ship may sail over the wide seas, cannot alter the finality of the latter conclusion. An enemy ship is subject to attack and eventually to defeat everywhere on the high seas in conformity with the perhaps regrettable but nevertheless valid state of international law. Finally, as soon as a ship enters the high seas, she becomes a portion of the territory of her state, into which the neutral having loaded his goods on board a belligerent vessel for the purpose of conveying them over the sea, has brought them of his own free will.

In conclusion, the proceedings are not defective because, as objected to in the appeal, the Prize Court omitted to decide whether the goods which are the object of the reclamations are liable to seizure or not. It is the object of Sec. 1 of the Prize Court Rules to stipulate the exact subject of the jurisdiction of the Prize Court, and if Sec. 2 prescribes on this account what the decision must embrace, this serves only to lay down the limits within which the court must remain, not, however, to prescribe that in each individual case a decision must be rendered concerning the questions named, should they be not material to the decision of the case.

The claimants under 9 and 12, although they were requested to do so, did not pay in advance the costs which were demanded of them. It is therefore unnecessary to enter into the consideration of their legal claims.

THE MARIA 1

Imperial Supreme Prize Court in Berlin

Decided October 5, 1915

The steamer Maria, with a cargo of wheat, en route from Portland, Oregon, to Belfast and Dublin, was captured on September 21, 1914, at 1° 49′ S. lat., 31° 50′ E. long., by H. M. S. Karlsruhe. The ship's papers were in order and showed it to be a Dutch ship owned by the Holland Gulf Stoomvaart Maatschappij, and that on September 17, 1912, it had been chartered for a term of five years to the English firm of Watson, Munro & Co., Ltd., of Cork, with branches at Belfast and Dublin, who subchartered the vessel, for the present trip, to Kerr, Gifford & Co., of Portland, Oregon. According to the bill of lading and the manifest, the cargo consisted of 84,860 sacks of wheat, whereof 40,974 were bound directly for Belfast, while 43,886 were destined for Dublin. The bill of lading read "to order." Considering that the cargo consisted of conditional contraband (Prize Regulations, Sec. 23, No. 1) and that Belfast, whither it was bound, serves the English forces as a base of operations and supply (Prize Regulations, Secs. 32, 33 d); considering, furthermore, that the vessel, by stopping on the way, had knowledge of the breaking out of the war and of the contraband character of its cargo, and was in a position to discharge it at a neutral port (Prize Regulations, Sec. 44), the Maria was seized and the commander proceeded to destroy it, because the captured vessel could not follow the warship without risk of being taken away from the latter, inasmuch as the proximity of enemy cruisers gave grounds to apprehend such recapture, and the Karlsruhe could not spare an adequate prize crew and, therefore, an attempt to bring in the prize would have jeopardized the success of the warship's undertaking (Prize Regulation, Sec. 113 b, β - δ). The cargo was sunk with the vessel.

The Dutch ship-owners put in a claim for indemnity for the damages caused them through the destruction of their ship.

¹ Translated from the Hanseatische Gerichtszeitung Hauptblatt, and the Zeitschrift für Völkerrecht, Vol. IX, No. 3, p. 413.

The Imperial Prize Court in Hamburg gave judgment to the effect that the destroyed vessel and its cargo were subject to condemnation, and dismissed the claimant.

The appeal taken by the claimant from the above decision is unfounded.

The assumption of the commander of the Karlsruhe that the entire cargo of the Maria was destined for Belfast did not agree it is true with the facts, the larger part being destined for Dublin. The judge of the lower court did not enter into the question whether Dublin, too, was a place of the kind named in Sec. 33 c, d of the Prize Regulations at the time when the Maria was expected there; he declared it sufficient that the ship was to have first called at Belfast, to which place at all events those provisions of the Prize Regulations referred, and that therefore also the portions of the cargo destined for Dublin were first directed thither. Whether this holding should be concurred in need not be considered, since in the meantime an official declaration has been received from the Chief of the Admiralty Staff, according to which since the beginning of the war Dublin also has served as base of operations and supply for the English forces. Thus the legal presumption of the enemy destination of the goods is supported.

It has been repeatedly decided, and therefore needs no further argument, that the presumptions set up in the Prize Regulations shall be given effect in judicial decisions. It therefore need only be considered whether the claimant has succeeded in rebutting this presumption. The lower court decided that the proofs submitted were insufficient, since even if the original intention had been to sell the wheat to mills operating for private persons, it could not be positively established to what use the wheat would actually have been put upon arrival in Belfast and whether the English Government would not gladly have purchased it, and at a high price, especially since the bill of lading was made out simply to order. This the claimant opposes, stating that the point is, not what would possibly have become of the cargo, but whether its destination was an enemy one; if this be not acknowledged, the proof, which is allowed in rebuttal of the presumption, would become an impossibility.

This contention is not correct. It is true that if only the wording of Secs. 32 and 33 of the Prize Regulations be considered, it might appear as if all questions had to be considered as of the time of seizure. Conditional contraband is, according to those sections, liable to seizure upon

proof that it is destined for the enemy forces and such a destination is to be presumed when the facts stated in Sec. 33 are given. It must not be taken from this, however, that the presumption applies only to the time of the seizure, and that the proof in rebuttal is to be considered as sufficient when it is shown that at the time of seizure the goods did not have an enemy destination. It was proper and necessary thus to express the rule in the Prize Regulations because they are in the form of instructions to the commanders of men-of-war, who are only called upon to take into account the facts existing at the time of seizure. Pending the decision of the prize court, however, a certain time must naturally elapse, and in consequence the instructions can have only a corresponding application, as is immediately apparent when the Declaration of London is taken into consideration. It is impossible to admit that the court is bound to leave subsequent happenings out of consideration, as for instance, a sale of the cargo to the enemy forces after capture and in ignorance of the same, or to consider the consignment of the cargo to a notorious army contractor as innocent because it was proved that at the time of seizure he had not vet resold the same to the government.

Section 33 of the Prize Regulations gives as the ground for the presumption of the place of destination, the address to which the shipment was originally consigned; the content of the presumption, however, has nothing to do with the address, but refers to the real destination, the destination for the use of the enemy forces. If the place of destination exists, this is taken as proof of the real destination. Proof in rebuttal, it is true, may be offered, but it is not sufficient to prove that at the time of seizure the aforesaid disposal of the goods had not yet been made; for, just as in cases in which the legal presumption does not come into operation and the proof of the hostile destination is not confined to facts which had already occurred at the time of seizure, so the content of the presumption can likewise not be subject to such a restriction. Otherwise, it would be most easy to avoid the seizure of conditional contraband by abstaining from giving the goods in the first instance any but a purely local destination. Whether or not proof in rebuttal may be submitted can only depend on consideration of the facts of each individual case. It also depends on the kind of cargo, and how important under existing circumstances it might be for the armed forces of the state and, consequently, upon the probability that the enemy government would acquire it. In the prize cases the Alfred Hage, Havsoe, etc., the court declared the presumption rebutted because proof was submitted which established that the cargoes, consisting of pit-wood, were actually sold on the spot where they were required and would there be used and consumed, and the court could not refrain from holding that the cargoes would have been actually used by private persons as intended. The present case is essentially different. The only actual fact is that at some time before the outbreak of the war the wheat was sold and shipped to an English importer. As to the rest, there were brought forward only assurances of the purchasers that they were not army contractors or anything of the sort, and that it was their intention to sell the wheat to mills in the neighborhood of their branches in order to meet their normal requirements. This may be taken as the literal truth, but it would still be absolutely uncertain where the wheat would in reality have gone, quite apart from the fact that after all the point is not where the corn is ground but for whom and for what the flour is intended.

That this case does not fall under Sec. 44 of the Prize Regulations was correctly decided by the judge of the lower court and not objected to by the claimant.

In view of the existing conditions it is clear, from the reasons given by the commander and repeated above, that he was entitled to destroy the captured ship, and it is unnecessary to go further into this point.

THE INDIAN PRINCE 1

Imperial Supreme Prize Court in Berlin

Decided April 15, 1916

In the name of the Empire: In the prize case of the English SS. *Indian Prince*, home port Newcastle, the Imperial Supreme Prize Court in Berlin, on the basis of the proceedings in its session of February 17, 1916, rendered judgment that the appeals against the judgment of the Prize Court at Hamburg of July 3, 1915, be rejected, the costs of the proceedings on appeal to be borne by the appellants.

Reasons

On September 4, 1914, the English SS. Indian Prince, laden with piece goods and en route from Santos, via Trinidad, to ports of the United

¹ Translation from copy of decision furnished by the Department of State.

States of North America, was captured by H. M. S. Kronprinz Wilhelm in 7°S. and 31°W., and since it was not possible to bring the prize in, it was sunk on September 9th, after the passengers and crew had left the vessel. The steamer was the property of the Prince Line, Limited, of Newcastle.

In reply to the proclamation of the Imperial Prize Court in Hamburg, thirty parties interested in the cargo have registered claims for compensation on account of the destruction of 37 shipments. G. Amsinck & Co. (Nos. 11 and 12 of the statement in the disputed judgment) withdrew the reclamation enumerated under No. 11. A decision has not yet been passed concerning No. 37.

The court restricted the proceedings to the question whether compensation is to be paid for neutral property on board an enemy ship which was sunk with the latter, and reached the decision that the sunken ship and cargo were subject to seizure. Reclamations 1 to 10, 12 to 36, and 38 are to be rejected as unfounded. Against the judgment of the Prize Court the claimants 2 to 10, 12 to 26 and 38 prosecuted an appeal, which was rejected.

The court which pronounced judgment in the Glitra case,2 decided that if an enemy prize be legally destroyed, compensation is not due for neutral property on board the vessel and destroyed with it. This must also be maintained in regard to the counter-statements brought forward. According to general principles, a claim does not arise if the act through which the cargo was injured was not illegal, but legal, nor is any basis for a claim to compensation afforded by a positive instruction of the Prize Regulations. This also applies to Sec. 110 of the Prize Regulations in connection with Sec. 9, to which the claimants have referred. For, however correct the conclusion may be that since the captain is not entitled to take neutral property off enemy ships in order to use it he is certainly not entitled to destroy it unused, nothing is gained for the matter which is here in question. The question here is, whether the commander is compelled by international law to refrain from sinking an enemy vessel when he has a legal right to do so, because its destruction would mean the loss of the neutral goods on board, especially if it is impossible for him to bring the vessel in. After repeated examination, the court must continue to answer this question in the negative. In this respect reference can only be made to the former decision. In particular it is incorrect to say that the former decision was based on the fact that,

² Printed supra, p. 921.

by shipping their goods in an enemy vessel, the shippers took the risk of capture and destruction, and therefore could not claim compensation. On the contrary, in taking a general view of the matter, the expression to the effect that the neutrals had the free choice whether they would entrust their goods to the enemy ship and run the risks in connection therewith, is only used in order to show that the denial of compensation is correct not only from a legal point of view, but also cannot be considered as unreasonable.

The principal reason which is decisive of the case in question lies in the actual dependence of the cargo on the fate of the ship, in consequence of which the cargo has to suffer the injury resulting from an act directed against the ship legally committed according to prize law. It cannot be seen why this principle, which is generally acknowledged and placed beyond doubt by the report of the drafting committee upon Article 64 of the Declaration of London,³ should apply only to the capture of a ship and not to its just destruction.

There remains, in consequence, only the question whether the plaintiff's claim is justified by the treaty of commerce between Prussia and the United States of North America. But this must also be answered in the negative.

Having regard to the practice which has been followed on both sides not only during the present war but also in previous cases, the principles of that treaty must also apply to the relations of the German Empire to the United States. As a matter of fact, however, this treaty contains nothing in favor of the claimants.

According to Article XII of the treaty of 1828, Articles XII and XIII of the former treaties of 1785 and 1799, and Article XII in the original form of 1785, are applicable. In this Article XII, the principle "Free ships make free goods" is agreed upon. While the treaties which the United States made at the same time with other states agreed upon the principle "enemy ships, enemy goods," an exception being made only for goods which were shipped before the outbreak of the war or within a certain period thereafter, the treaty with Prussia is silent on the question "enemy ships, enemy goods" and it appears doubtful from the treaty how this subject is to be understood. Prussia may have taken the stand that neutral property should not be subject to confiscation even on enemy ships, and this might be presumed from the fact that not long afterwards the same principle was acknowledged in common law.

² For this report, see Supplement to this Journal, Vol. 8 (1914), p. 88 at p. 139.

In the negotiations with regard to the treaty of 1785, as the claimants aptly point out, Prussia actually desired that instead of the sentence "enemy ships, enemy goods," suggested in the American draft, the opposite view, "enemy ships, free goods," be adopted. But the United States would not agree to this, and therefore nothing at all was settled upon this point. Thus the law as laid down by the treaty corresponded to the rules of the Armed Neutrality of 1780. Only the rule "free ships, free goods" is expressed in the treaty, while nothing is said about neutral goods on enemy ships. This has often been taken to mean that the confiscation of neutral goods on enemy ships would not be resisted. By long practice it had become the custom to consider the confiscation of neutral goods on board enemy ships as a concession to the belligerents, in return for which the inviolability of enemy goods on neutral ships is acknowledged.⁴

This is precisely the standpoint which the authorities of the United States of North America took at the time of the celebration of the treaty of 1785 with regard to its interpretation. No less a person than the Secretary of State Jefferson, who was himself interested in the conclusion of the treaty of 1785, expressed himself in this sense when, in 1793, France, then at war with England, complained to the United States that England had captured French goods in American ships and that America had allowed it. In Jefferson's note of July 24, 1793, rejecting these complaints as unfounded because according to international law (Consolato del Mare) enemy goods in neutral ships are subject to confiscation, which is only modified if the principle, "free ships, free goods" is provided by the treaty, it is stated:

We have adopted this modification in our treaties with France, The Netherlands and *Prussia*, and therefore as to them, our vessels cover the goods of their enemies, and we lose our goods, when in the vessels of their enemies."

Although in the treaty with Prussia the principle "Free ships, free goods" only is agreed upon, the Secretary of State, Jefferson, immediately presumes that, in consequence, the principle "enemy ships, enemy goods" also applies in the relations with Prussia.

The claimants, therefore, do not refer to Article XII, but to Article XIII of the treaty of 1785 and 1799. They do not deny that if the French text be used, nothing can be gained for their point of view from this article. But they want to hold to the English text, in which a discrepancy occurs, from which they seek to infer that under all circum-

⁴ Cauchy, Le droit maritime international, II, p. 262.

stances when the goods belonging to citizens of the United States of America are in question, even if the cargo be on board an enemy ship, compensation must be paid.

It is unnecessary to consider which of the two texts is competent, or how, if both are competent, a contradiction between them is to be solved, for even the English text leads to no favorable result for the claimants. In the first place, their reading is directly contradicted by the interpretation of the treaty adopted by the United States, as mentioned above, in the year 1793. But purely from a grammatical point of view, the reading of the English text adopted by the claimants is not admissible. Whilst the French text speaks of goods shipped "à bord des vaisseaux des sujets ou citoyens de l'une des Parties," the English text does not read, as it should in a literal translation, "carried in the vessels of the subjects or citizens of either party," but reads "carried in the vessels, or by the subjects or citizens of either party." Accordingly, the claimants think that not only goods shipped on American or Prussian vessels, but goods shipped by American or Prussian citizens as well, regardless of what kind of vessels are employed, or even if they be shipped in enemy vessels, should be presumed to be synonymous with goods which belong to such citizens.

Of the latter goods, however, no mention is made in the treaty. The "carried by" does not refer to the property relationship but to the person who undertakes the shipment, who, however, is the ship-owner and not the shipper or consignee. The whole difference between the English and French texts amounts to the extension, that, in addition to the ships of the citizens of both states, special stress is laid in the English text on the vessels of the parties to the contract, the vessels of the states,—"the vessels of either party"; for the words "of either party" must refer to "in the vessels" if the latter expression is not to be totally unintelligible. It is characteristic, that the text in Martens, Recueil des Traites, Supplement, II, p. 226, also contains the edition of the treaty. furnished by the Interior Department and an independent translation from the English which was undoubtedly made soon after the conclusion of the treaty of 1799, in which the translator reproduces the wording exactly in this sense. The "elles même" in the turning on "d'elles même" can for grammatical reasons apply only to the "Parties contractantes" in whose own vessels goods are shipped.

Moreover, a different interpretation is impossible for positive reasons. Article XIII treats of contraband. In order to avoid disputes, which are apt to arise over the question whether goods are contraband of war or not, it was agreed that contraband likewise should not be subject to seizure. It is true that in case of necessity contraband goods may be requisitioned upon payment of their value; they may also, should the necessities of war demand it, be detained for the time being, the owners to be paid for the losses but only against payment of the damage sustained by the detention. These stipulations of Article XIII are mostly closely connected with the provisions of Article XII. While contraband is always excepted from the general principle "free ships make free goods," after that principle is laid down in Article XII for enemy goods in Prussian or American vessels, Article XIII enters into the exceptional case of goods shipped in such vessels which are contraband of war or suspected of being contraband. The provision concerning the treatment of the ships in question, according to which the master of a vessel stopped for carrying contraband to the enemy is to have the choice of delivering up the contraband articles and then proceeding unmolested upon his voyage, applies without doubt only to the ships of the parties to the treaty. It appears absolutely out of the question that the agreement was also meant to apply to an enemy ship carrying munitions, etc., to its own belligerent country. It cannot have been considered that the belligerent who succeeded in capturing a ship with weapons and munitions should be obliged to pay compensation when it happened to be a citizen of the other state party to the treaty who undertook to send them to the enemy, or that the enemy vessel after it had given up the contraband should be allowed to continue its voyage unmolested.

If Article XIII of the treaty of 1799 does not refer to contraband on enemy ships, it is self-evident that nothing concerning the treatment of innocent goods on such vessels is laid down. The principle "enemy ships, free goods" applies also to the United States. Its validity, however, is not derived from any special treaty, but from common international law as laid down in the Declaration respecting Maritime Law adopted at Paris in 1856, which, according to the German Prize Law Regulations, applies also to countries, like the United States, which did not agree to that Declaration. Likewise, in regard to the question whether in such cases as the one under consideration the owners of neutral goods are to receive compensation, the same principles must be applied towards the citizens of the United States as towards the subjects of other neutral countries. These principles are laid down in the Glitra case.

BOOK REVIEWS

De vaebnede Neutralitets—Forbund: Et avsnit av Folkerettens historie [The Armed Leagues of Neutrality. A Chapter of the History of International Law]. By Thorvald Boye. Christiania, Copenhagen, Stockholm: Grondahl & Son, 1912. pp. vi, 360.

Nordens, sarlig Danmarks, Neutralitet under Krimkrigen. [The Neutrality of the Scandinavian Kingdoms and especially of Denmark during the Crimean War]. By Fredrik Bajer. Copenhagen: 1914. pp. 826.

The one great contribution of the Scandinavian nations to the evolution of modern international law is their persevering efforts to obtain recognition from belligerent Powers of a body of rules on the rights of neutral states during war, especially in relation to navigation and maritime commerce. In course of time this has developed into a keen interest, on the part of the Scandinavian kingdoms, for a more secure status of neutral states in general, and they have elaborated for diplomatic discussion a body of rules with relation to declarations of permanent neutrality. Very likely the present war may give a rude blow to the whole conception of neutrality and the rules pertaining to this status. It seems as if out of the present chaos there may rise a new ideal which will strip neutrality of its negative aspect and give it a constructive sense which will confer on "neutral" states duties to uphold, as far as possible, international peace and public right. In the meantime, the neutrality conception has served a useful purpose as far as it goes, and it is natural and fitting that Scandinavian authors should be particularly interested in proving the part their countries have played in the evolution of neutrality law and custom.

Dr. Thorvald Boye, of the Norwegian Ministry for Social Questions, presents us with the result of year-long painstaking studies in the Record Office in London, in the archives of the Foreign Offices in Copenhagen and in Stockholm, relating to the successive Armed Leagues of Neutrality. After a brief sketch of the evolution of neutrality rules, especially with regard to navigation in war time, up to 1642, he furnishes us with an interesting survey of Scandinavian foreign relations in the seventeenth

century. There were then only two Scandinavian kingdoms, Sweden and Denmark-Norway, continually at war with each other, after the power of the Hansa had been finally broken. During a short spell of military ascendancy, Sweden climbed the dizzy heights of great power, but the Great Northern War (1700-1721) made for all time an end of this state of things. Russia became the Great Power of the North. The result was a sort of equilibrium between the two Scandinavian kingdoms, and in this were found the necessary conditions for coöperation between them, in their common interest. At four different times during the eighteenth century we see Denmark-Norway and Sweden conclude Neutrality Leagues. It is just to say that the initiative invariably lies with the Danes. Sometimes they succeeded in obtaining the adhesion and active support of other Powers: Russia, Prussia on one occasion, Austria, Portugal and the two Sicilies, and we know that Holland was ready in 1780 to join the League. England, however, preferred to have Holland as an enemy rather than as a neutral, and declared war on her.

Dr. Boye traces with great care the history of this interesting development. He first mentions the precedents of 1691 and 1693, during the war between France and the coalition led by William the Third. He then gives a detailed account of the Leagues of 1756 (Seven Years' War), 1780 (American Independence), 1794 (Revolutionary War) and of 1800 (Napoleon). The great mass of material, to which several new records are added, is skillfully handled in a sober and trustworthy way. Perhaps it might have been desirable if greater attention had been given to the philosophy of the subject. We are now somewhat subdued by the mass of detailed information.

It is very interesting to note that it is not only through their politicians that these northern countries have contributed towards the development of this part of international law. In a special paragraph Dr. Boye gives an account of the action and the writings of the remarkable Martin Hübner who, more than any other author, has anticipated in his books the theories of neutrality which were to prevail in the nineteenth century. It should not be forgotten that the Paris rules of 1856 essentially embody the rules for which the northern Powers had been contending. Hübner, even, in one of his books, anticipates the principle of an impartial prize jurisdiction, though not so elaborate as the plan of 1907, which unfortunately has not yet been put into action.

While, thus, the principles for which these small kingdoms had been contending were to be vindicated by posterity, the experiment of an

armed league of neutrality ended, in 1801, in defeat for the countries themselves, defeat not even very glorious. The policy of the successive leagues had as a matter of course been mainly directed against England, who, then as now, utilized its mastery of the seas as its chief weapon in war, not always over-mindful of neutral "rights". Denmark's defeat in 1801 and its enforced withdrawal from the League which it had, if not initiated, at any rate contributed to inspire, is one of the numerous tragedies of a feeble state trying in vain to satisfy both parties at war.

Dr. Boye's conclusion is optimistic, as was natural in 1912, when his book was published. It would hardly have been possible to end in the same vein at the present time.

The book has a very good analytical table of contents, but the absence of an alphabetical index is greatly to be regretted.

The book by Fredrik Bajer, the Danish veteran friend of peace, treats of a very special chapter of the history of neutrality during the nineteenth century. It is an imposing monument of painstaking industry and loving care. It consists in the main of copious extracts from the records in the Danish Foreign Office and must represent years and years of patient, incessant work. The subject is, of course, of a very special character, but the book is quite readable because the original documents are always cited in their original style, and as they are bound together with short introductory and transitory paragraphs, the tale becomes one of continuous interest. There are excellent indexes, so that the bulky volume can easily be consulted.

In a first part the author traces the history of the simultaneous declarations of neutrality from the three Scandinavian kingdoms of December (1853) in view of the threatening European war, which broke out in 1854. A second and third part follow the foreign policy, especially of Denmark, during the war, while a fourth part tells the tale of the decay of the common policy of neutrality, especially through the famous treaty of November 21, 1885, by which England and France "guaranteed" the integrity of Norway and Sweden as against Russia. This treaty meant an abrupt departure from the policy of neutrality, and from the Russophile attitude of Bernadotte (1844). It would probably have spelled the entry of Norway and Sweden into the war against Russia, if peace had not intervened at the beginning of 1856. Fortunately, the treaty of 1855 has been formally abolished with regard both to Norway (in 1907) and to Sweden (in 1908).

In a last part Mr. Bajer traces the history of the negotiations for the Treaty of Paris. It is to be hoped that the author will be able to publish later a fifth part, which he has prepared, and which completes the history up to the declaration on maritime law of April 23, 1856.

In any event, the author is to be sincerely congratulated on this fine fruit of his disinterested and painstaking industry.

CHR. L. LANGE.

War or a United World. By Soterios Nicholson. Washington: The Washington Publishing House. 1916. pp. 325.

The author has in this book given to us a discursive and somewhat rambling, I shall not say pedantic, review of ancient Greece, of Italy and the Roman Empire, of the Franco-Iberian Peninsula, the British Isles, Russia, Germany and Prussia. In Chapter 8 he enumerates the causes of the present war as he sees them, and in Chapter 9, the last chapter of the book, we are given his views relative to the establishment of peace with justice. The writer believes that even from the point of view of competition, warfare is neither a necessary nor a desirable factor, "nor indeed a prevailing process in nature." It is cooperation which is useful and necessary. Patriotism should be something larger than national egotism. "States are meant to cooperate in productive activity, in the same way as individuals, if they are meant to exist and prosper at all."

Coming to the point of the whole discussion, we are told that international cooperation must "receive embodiment in terms of a federation of all the states in the world." It is not proposed that the states shall give up their freedom as regards their internal affairs, but a universal state, a united world, there must be. The machinery of the federation must consist of an international legislative assembly, a judicial tribunal and an executive body. Since the executive body is to employ "instruments of punishment" in terms of economic pressure and of the use of armed force, the program of the author is in this regard essentially the same as the program of the League to Enforce Peace. We read:

The use of armed force will be effected whenever occasion arises by the sending of a sufficient portion of the Federal army or navy or both to the precincts of the offending state and by threatening to compel the latter to comply with law by force. If the state refuses to yield, the military force will invade the state, etc.

In short, it is proposed that the resort to arbitration must be compulsory and the judgment of the court must be binding upon all states. A somewhat careful reading of this book fails to disclose an adequate appreciation of The Hague Conferences as law-making bodies. The author is evidently unaware of the work already accomplished in behalf of an international judiciary. The difference between judicial, arbitral and other methods of composition is not recognized. The question of sanctions has received short shrift for the reason that the author makes the common mistake of drawing his analogies from the municipal rather than from the international field, or from the experiences of our own Supreme Court with its decisions as between States.

ARTHUR DEERIN CALL.

Kriegführende Staaten als Schuldner und Gläubiger feindlicher Staatsangehöriger. By Wilhelm Kaufmann. Berlin: J. Guttentag's Verlag. 1915. pp. 86.

The science of international law has labored to create a body of rules to regulate, as far as can be, the conduct of war; and it has in a brief time achieved the seemingly impossible, namely, the recognition on the part of nations that war is a legal relation, a law-regulated status. The modern interdependence of states and peoples is as vital in the realm of finance as elsewhere. Hence, upon the outbreak of war, belligerent states often find themselves debtors or creditors for enormous sums, of enemy subjects. What are the rules of law governing the mutual rights and duties of belligerent states and enemy subjects in respect of these obligations? Professor Kaufmann shows, in this sharply reasoned monograph, that the manifold effects of war upon these obligations extend even to third parties and that national as well as international law come into play. In general, the relations of the parties are in the first instance governed by the international law of war, but also, in so far as this law is imperfect or permits it, to a large extent by the national law of the belligerents. In this connection Professor Kaufmann reiterates the theory, of which he is a vigorous champion, that individuals are the subjects of international law; hence if the rules of international law may fairly be regarded as immediately applicable between the enemy subject and the debtor (or creditor) state, no national law of either belligerent state can legally alter or destroy the individual's rights or duties under international law.

The author examines at length the authority of a belligerent state to suspend payment of its obligations to enemy subjects, as he states Great Britain, France and Russia are now doing; and he pronounces such suspensions contrary to the uniform practice of nations and hence unwarranted in law. The subsequent similar enactments of Germany are deemed retaliatory. Considerable attention is given to the question of what protection and relief the injured enemy subject may expect of his own government. For example, have the German creditors of Russia the right to demand of Germany that the Russian bank deposits in Berlin attached by the German Government be applied to the satisfaction of their just claims against Russia? Professor Kaufmann thinks not. He suggests, however, that active reprisals against the repudiating states should be undertaken and a special fund be accumulated thereby with which to pay the repudiated obligations. But the author's appeal to Article 3 of the Fourth Hague Convention of 1907 providing that a belligerent who violates the Réglement pertaining to war on land may be held liable to pay damages, seems inapt, for the reason that no paragraph of the Réglement deals with the relations between enemy subjects and belligerent debtor or creditor states.

George C. Butte.

Tratado de Derecho Internacional Publico. By Dr. Simon Planas Suarez. Madrid: Hijos de Reus. 1916. Vol. 1, pp. 502.

The distinguished publicist and Venezuelan diplomat, Dr. Simon Planas Suarez, Envoy Extraordinary and Minister Plenipotentiary of his country to the Government of Portugal, has just published a very interesting work under the above title.

This work was not intended to deal with the problem which is of such great importance to-day, namely, that relating to the reconstruction of international law. Its aims lie in a totally different direction. Its purpose is to make known international law in its most important branches as it existed before the war.

The object which the author has proposed to himself amply justifies the plan and method of the work. As a matter of fact, the author reviews in his first volume, which has just appeared, all questions relating to the subject of peace. It treats of Territory, Population, Government, Sovereignty, the Independence of States and questions relating thereto especially Intervention and the Monroe Doctrine, State Property, Treaties and their Interpretation, Territorial Seas, Rivers, Aerial Domain, Nationality, and all questions in connection therewith.

These subject-matters are not treated from the point of view of the "doctrinaire," but from an essentially practical one. It outlines the opinions of the principal authorities on each of these questions, and gives a sketch of the principal diplomatic treaties relating to them.

The method and contents of the book enable any one wishing to obtain information speedily on any question of international law, to find the same concisely stated in the work of Dr. Suarez without having to search for the opinions in different works on each subject with which international law is concerned, as we are now compelled to do.

But besides this, the work of the distinguished Venezuelan diplomat has another advantage. This has been brought to our attention by Mr. A. Merignac, Professor at the University of Toulouse, in a review of the book which appeared in the last number of the Revue Générale de Droit International Public,—that is, it makes known to European authors and publicists the Spanish and South American bibliography on international law.

We are convinced that the splendid work of Dr. Suarez will be well received by all persons who dedicate themselves to the subject of international law, and Dr. Suarez must be sincerely congratulated on his efforts, which have succeeded in enriching American literature and bibliography by the work that has just been published from his pen.

ALEJANDRO ALVAREZ.

The Freedom of the Seas. A dissertation by Grotius. Translated, with a revision of the Latin text, by Ralph Van Deman Magoffin. Edited, with an introductory note, by James Brown Scott. New York: Oxford University Press. 1916. pp. xv, 83.

The Mare Liberum appeared anonymously in 1608, and was Grotius' first published contribution to international law. A feature causing the little dissertation to deserve unusual attention at the present time is indicated by the translator's selection of a title just now in common use,—"The Freedom of the Seas." It is true that there is no direct treatment of the topics now pressing; for Grotius had not occasion to discuss whether neutrals in time of war should continue in unrestricted use of the sea and whether even belligerent private and non-contraband property should be as safe on sea as on land. Yet there is presentation of the question necessarily underlying those topics, the question, that is to say, whether the sea is open to all in time of peace. On this ele-

mentary problem Grotius contends that prima facie the sea is open to all people whomsoever and for the purpose of commerce with all people whomsoever. As the headings of two of the chapters put the matter: "Jure gentium quibusvis ad quosvis liberam esse navigationem" and "Jure gentium inter quosvis liberam esse mercaturam." Those two chapters (I and VIII) contain passages capable of use to-day, and so does the preliminary address "Ad principes populosque liberos orbis Christiani." The other parts are of more temporary interest, as they deal with the details of a controversy between the Portuguese and the Dutch on Dutch rights of commerce with the East Indies. Yet even these more specialized passages are worthy of being examined as specimens of Grotius' method, especially as his more famous treatise De Jure Belli ac Pacis is so voluminous as to discourage even the few who care to read old books. The Mare Liberum, though short, gives adequate knowledge of the use which Grotius made of ethical reasoning and of quotations from the Bible, the Greek and Latin classics, and the literature of the Middle Ages.

Grotius' Latin is impressive, and no translation can take its place; but, like all modern Latinists, Grotius was compelled to use words seldom or never found in the classics, and hence the parallel English version is welcome.

The introduction by Dr. Scott gives the historical background for the dissertation, and explains that half a century ago the dissertation was discovered to be a revision of the then unpublished treatise *De Jure Prædæ*, and that, according to some experts, both this short dissertation and that larger treatise may have owed their existence to some employment of Grotius by the Dutch East India Company.

EUGENE WAMBAUGH.

The Law of Contraband of War. By H. Reason Pyke. Oxford: The Clarendon Press. 1915. pp. xl, 314.

It is seldom that a book which is timely—especially if it be a law book—is thoroughly and carefully prepared. Mr. Pyke's study of the law of contraband is an exception. Of its timeliness there can be no question. There is no other branch of international law which upon the outbreak of war becomes of such general interest to the commercial states of the world, whether belligerent or neutral, as does the law of contraband. The exercise by belligerents of rights over neutral property

which are conceded to them by international law impresses upon neutrals the fact that no nation lives to itself alone and that the commerce of states which are not parties to a war may be seriously affected thereby. It is in connection with the subject of contraband also that the most serious diplomatic controversies between belligerent and neutral states are likely to arise since the interests of the two groups are in direct conflict. There has been no important war in the last three centuries in which complaint has not been made that the belligerent in the exercise of his right to prevent supplies of war material from reaching his enemy was infringing the rights of neutrals. Mr. Pyke states in bold language the principle which governs the attitude of belligerents. "As long as war exists between the great Powers, neutral interests must continue to be subordinated to the exigencies of the belligerents." This is unpalatable doctrine to a neutral, but it is the doctrine to which every maritime neutral, when belligerent, has appealed.

The comprehensiveness of Mr. Pyke's study is apparent from his table of contents. After showing that the idea of contraband is as old as the wars of the Greeks and Romans, and then tracing the development of its principles down to our own day, he discusses the position of neutral governments with respect to contraband and the relation of the neutral individual to contraband trade, the dependence of contraband upon destination, the doctrine of continuous voyage, the means by which belligerents may interfere with the carriage of contraband, the penalty for engaging in its carriage, the treatment of contraband in the Declaration of London and the principles followed in the course of the Great Appended to the text are several important documents, the Declaration of London with the General Report of the Drafting Committee, the Orders in Council adopting the Declaration, the Contraband Proclamations of the British Government, the Circular of the American Department of State as to Neutrality and Trade in Contraband, and the Order in Council framing Reprisals against Germany. A feature of the book of particular value is the bibliography, which occupies eighteen closely printed pages and is probably the most complete bibliography of the subject in the English language.

In so small a book—there are only 255 pages of text—the author is justified in imposing severe limitations upon himself. He confines his work in the main to a statement of what the law is without attempting to indicate what the law ought to be. In his discussions of the origin and development of existing rules, however, he frequently indicates the

line of future development. His chapter on continuous voyage, for instance, was written, as stated in the preface, before Sir Samuel Evans' famous judgment in The Kim, L. R. [1915] p. 215; 1 but it is plain that that case was decided as Mr. Pyke thinks that it should have been, and in that opinion the present writer begs to concur. In his treatment of the relation of prize courts to municipal law, which is an accurate statement of the law as it existed at the time of writing, there is nothing to foreshadow the opinion of the Privy Council in the case of The Zamora, L. R. [1916], 2 A. C. 77.2 Mr. Pyke seems to think that the American Government was over-scrupulous as to its neutral obligations in forbidding the exportation of submarines in sections. This is one of the few instances in which he betrays the fact that he is writing from the standpoint of a subject of a belligerent country. The letter quoted on page 73 and said to be a reply to a protest from France in 1796 was a reply made to the British Minister in 1793. See Moore, Digest, VII, The references to Moore and Taylor in note 1 on page 73 are erroneous. But these are small blemishes in a thoroughly commendable treatment of a difficult and important subject.

LAWRENCE B. EVANS.

America's Foreign Relations. By Willis Fletcher Johnson. New York: The Century Company. 1916. 2 vols. pp. xii, 551, vii, 485. \$6.00.

Several years ago there appeared two volumes treating the general field of American diplomatic history, both by experts in diplomacy and international law. There were still needed an authoritative volume suitable for a college text and a more popular treatise for the general reader. The first need was partially met by a recent book, designed to be "comprehensive and balanced—a condensation of ascertained conclusions," by a college professor trained in the teaching of American history. The second need is largely met by the two copious volumes before us, prepared primarily for the average lay citizen by a well-trained veteran newspaper editorial writer, who is also well known as the author of A Century of Expansion and Four Centuries of the Panama Canal.

Through observations of a lifetime largely given to the study of foreign relations, Mr. Johnson is persuaded that this most important

¹ Printed in this JOURNAL, October, 1915 (Vol. 9), p. 979.

² Ibid., April, 1916 (Vol. 10), p. 422.

field of American history is most neglected and most misunderstood. He writes to meet the need for a wider knowledge of the origin and development of American international relationships and principles of foreign policy. His chief aim is to direct the "self-centered and circumscribed" American people from an "excess of adulatory introspection—sometimes smug and sometimes highfaluting self-complacency and lack of appreciative perspective" in viewing world affairs, to cure them of their "bigoted parochial egotism," and to inspire them with a more adequate and accurate conception of their true relations with other nations. He shows in perspective the relation of America to the world, indicating permanent American policies.

The dominant quality of the narrative is the vivid interest which it awakens and sustains in the reader. It is agreeable in style. It gives illuminating views of political conditions which explain or affect diplomatic relations; and, while visualizing in perspective the larger affairs, it does not lose the outlines of individual characters and ambitions.

It is also written with the spirit of candor and impartiality. Its facts are not diluted with mere sentiment. And yet, the author may interpolate his judgment. Occasionally he is somewhat extravagant, as when he states that we owe to Frederick the Great the principle that "free ships make free goods." (Vol. I, p. 23.)

The materials of each chapter are usually well organized. Minor events are grouped as subordinate factors of larger events or movements. The arrangement is topical and logical rather than chronological. In a few instances, the location of minor topics could have been improved and occasionally the connection is not clear. Several important topics or phases have been slighted. In the decade from 1850 to 1860 more than a short paragraph might properly have been given to Mexican relations, and other Latin American relations deserve more mention.

Of the twenty chapters in Volume I, the first five treat the beginnings to 1783, the second five cover the period from 1783 to 1815, the third five trace the chief topics in the period extending approximately to 1850, and the last five are devoted approximately to the decade closing in 1860, including Isthmian interests, early Eastern relations, the opening of Japan, early relations with Hawaii, and some cases of vigorous self-assertion. Volume II begins with Chapters XXI and XXII on the Civil War, and closes with Chapters XXXV and XXXVI on the settlements and unsettlements of the twentieth century, and war and peace and arbitration. Especially valuable is Chapter XXIX on "Latin

American neighbors," treating principally the settlement of disputes arising from claims, and mediation and arbitration in various controversies.

The author emphasizes the "prenatal influences" resulting from the fundamental fact that the United States was the "offspring of Great Britain," and the additional significant fact that colonial development was coincident with European international intrigues and rivalries—that America was "founded and Anglicised because of European complications."

In treating the beginning of American policies under the weak Confederation, he states that the only chief good achievement in foreign relations was the adoption (in Franklin's treaty with Prussia) of the high and advanced principle of neutrality in naval warfare—which later became established as an important precedent.

In considering the organization of an efficient department of foreign affairs and the establishment of principles of diplomatic intercourse under the Constitution, to begin anew under "troublous conditions" the task of cultivating foreign relationships, he gives the chief credit to Jay, Hamilton and Washington. For leadership in seeking a better plan of central government which could avert foreign dangers and solve foreign problems, and for his later judicial decision that international law is a part of the common law of nations, he gives great credit to Jay who knew by experience the disastrous inefficiency of the conduct of foreign affairs under the incompetent Confederation. For impressing upon the State Department the two later triumphant principles of continental territorial expansion and international arbitration (or adjudication) he gives credit to Hamilton. The greater credit, however, he gives to Washington, who read the entire record of foreign transactions of the Confederation, who was in a notable degree his own Secretary of State, who had extraordinary vision and judgment in viewing the great movements of the world, and who had a sound common sense in diplomacy which enabled him to keep the young republic "free from the tail of the French diplomatic kite" and to lay the foundation of our foreign policy and practice on the principle of keeping disengaged from European policies and wars.

To Jefferson he gives credit for one "great landmark of American diplomacy," the statement in 1790 that "we should contemplate a change of neighbors with extreme uneasiness" and that "a balance of power on our borders is not less desirable to us than a balance of power

in Europe has always appeared to them"—a statement which fore-shadowed many later declarations.

Mr.: Johnson asserts that by the close of Washington's second administration the fundamental principles of American foreign policy had been laid—independence and equal sovereignty, neutrality, freedom of the seas, complete separation from European politics, and the Americanism expressed in the dominance of the United States on the North American continent—and he finds in the later century of foreign relations scarcely a new principle, but merely the extension and development of the earlier principles of external relations and policies.

To John Adams, whose administration is called the "crisis of nationality," he gives credit for being the first great advocate of the development of American power at sea. In a chapter on "Complete Nationality" he emphasizes the fact that the Louisiana purchase gave the United States unquestioned dominance of North America and a further hope for separation from European affairs. Then in a chapter on the second war with Great Britain he emphasizes how impossible was isolation and how important is sea power in international relations.

He treats the vital essential principle of the Monroe Doctrine, based upon the universal principle of self-defense, as "the final capstone of American independence," a declaration of diplomatic independence and a logical conclusion of European emigration to America. The expansion of American interests and foreign relationships, following the assertion of the Monroe Doctrine, he attributes largely to the clear enunciation of the "world power status" and the establishment of the independence of the Latin American states.

The author has chosen to burn his bridges behind him—evidently because he has not intended to write a technical treatise. He presents not a single foot-note in citation of any authority, nor the least indication of the sources from which any statement has been derived, but there is abundant evidence that he has industriously used reliable sources in gathering his matter.

Although the investigation seems thorough, a number of minor inaccuracies of statement are disclosed. What is the evidence that Jefferson obtained his expansion policy from Hamilton? (Vol. I, p. 160). Did Daschkoff sever diplomatic relations on October 31, 1816? (Vol. I, pp. 297 and 298). He took leave on March 6, 1819. Baron Tuyl was not appointed in 1816, soon after the reception of William Pinckney at St. Petersburg, and was not the immediate successor of "the egregious

Daschkoff" (p. 299). Not until April 19, 1823, did he present his credentials, as the author himself states in another connection (p. 317). He was the successor of Chevalier Pierre de Poletica, who arrived at Washington in May, 1819, but, in the absence of the President, did not present his credentials until August, 1819. What is the authority for the statement that J. Q. Adams became the American Minister to Denmark following the negotiation of the Anglo-American treaty of peace at Ghent? (Vol. I, p. 299). The United States had no diplomatic representative to Denmark, after the departure of Erving in May, 1812, until the arrival of Henry Wheaton as chargé in 1827. Thomas Sumter was sent in 1809 to the Portuguese court residing in Brazil, and not to Portugal (Vol. I, p. 299). Poinsett was not "succeeded by Col. Anthony Butler" in 1835 (Vol. I, p. 381). He took leave of the Mexican Government on December 25, 1829, and Butler was already commissioned as chargé d'affaires over two months earlier (October 12). William L. Scruggs (not "William E.") was commissioned Minister Resident to Colombia on April 9, 1873 (Vol. II, p. 186).

Mr. Johnson's volumes will help to make better citizens, and they deserve careful study.

J. M. CALLAHAN.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

[For Table of Abbreviations see Chronicle of International Events, p. 898]

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THE CHINO-JAPANESE TREATIES AND EXCHANGES OF NOTES OF MAY 25, 1915 1

TREATY RESPECTING THE PROVINCE OF SHANTUNG

His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, having resolved to conclude a treaty with a view to the maintenance of general peace in the Extreme East and the further strengthening of the relations of friendship and good neighborhood now existing between the two nations, have for that purpose named as their plenipotentiaries, that is to say:

His Excellency the President of the Republic of China, Lou Tsengtsiang, *Chung-ching*. First Class *Chia Ho* Decoration, Minister of Foreign Affairs.

And His Majesty the Emperor of Japan, Hioki Eki, *Jushii*, Second Class of the Imperial Order of the Sacred Treasure, Minister Plenipotentiary, and Envoy Extraordinary;

Who, after having communicated to each other their full powers and found them to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE 1

The Chinese Government agrees to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests and concessions which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung.

ARTICLE 2

The Chinese Government agrees that as regards the railway to be built by China herself from Chefoo or Lungkow to connect with the

¹ Reprinted from the *Peking Gasette* of May 27, 1915, and the *Far Eastern Review* for May, 1915, as a complete and authoritative English translation.

Kiaochow-Tsinanfu railway, if Germany abandons the privilege of financing the Chefoo-Weihsien line, China will approach Japanese capitalists to negotiate for a loan.

ARTICLE 3

The Chinese Government agrees in the interest of trade and for the residence of foreigners, to open by China herself as soon as possible certain suitable places in the Province of Shantung as commercial ports.

ARTICLE 4

The present treaty shall come into force on the day of its signature. The present treaty shall be ratified by His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, and the ratification thereof shall be exchanged at Tokio as soon as possible.

In witness whereof the respective plenipotentiaries of the high contracting parties have signed and sealed the present treaty, two copies in the Chinese language and two in Japanese.

Done at Peking this twenty-fifth day of the fifth month of the fourth year of the Republic of China, corresponding to the same day of the same month of the fourth year of Taisho.

EXCHANGE OF NOTES RESPECTING SHANTUNG

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

In the name of the Chinese Government I have the honor to make the following declaration to your Government:—"Within the Province of Shantung or along its coast no territory or island will be leased or ceded to any foreign Power under any pretext."

I avail, etc.,

(Signed) Lou Tseng-tslang.

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency.

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you made the following declaration in the name of the Chinese Government: "Within the Province of Shantung or along its coast no territory or island will be leased or ceded to any foreign Power under any pretext."

In reply I beg to state that I have taken note of this declaration. I avail, etc.,

His Excellency.

(Signed) HIOKI EKI.

Lou Tseng-tslang,
Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE OPENING OF PORTS IN SHANTUNG

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to state that the places which ought to be opened as Commercial Ports by China herself, as provided in Article 3 of the Treaty respecting the Province of Shantung signed this day, will be selected and the regulations therefor will be drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan,

I avail, etc.,

His Excellency,

(Signed) Lou Tseng-tsiang.

HIOKI EKI,

Japanese Minister.

Reply

Peking the 25th day of the 5th month of the 4th year of Taisho

Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you stated "that the places which ought to be

opened as commercial ports by China herself, as provided in Article 3 of the treaty respecting the province of Shantung signed this day, will be selected and the regulations therefor, will be drawn up by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI,

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE RESTORATION OF THE LEASED
TERRITORY OF KIAOCHOW BAY

Note

Peking, the 25th day of the 5th month of the 4th year of Taisho.

Excellency.

In the name of my Government I have the honor to make the following declaration to the Chinese Government:

When, after the termination of the present war, the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions:

- 1. The whole of Kiaochow Bay to be opened as a commercial port.
- 2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.
- 3. If the foreign Powers desire it, an international concession may be established.
- 4. As regards the disposal to be made of the buildings and properties of Germany and the conditions and procedure relating thereto, the Japanese Government and the Chinese Government shall arrange the matter by mutual agreement before the restoration.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
LOU TSENG-TSIANG,
Minister of Foreign Affairs.

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you made the following declaration in the name of your Government:

"When, after the termination of the present war, the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions:

- 1. The whole of Kiaochow Bay to be opened as a commercial port.
- 2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.
- 3. If the foreign Powers desire it, an international concession may be established.
- 4. As regards the disposal to be made of the buildings and properties of Germany and the conditions and procedure relating thereto, the Japanese Government and the Chinese Government shall arrange the matter by mutual agreement before the restoration."

In reply, I beg to state that I have taken note of this declaration.

I avail, etc.,

(Signed) Lou Tseng-tsiang.

His Excellency,
Hioki Eki,
Japanese Minister.

TREATY RESPECTING SOUTH MANCHURIA AND EASTERN INNER MONGOLIA

His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, having resolved to conclude a treaty with a view to developing their economic relations in South Manchuria and Eastern Inner Mongolia, have for that purpose named as their plenipotentiaries, that is to say;

His Excellency the President of the Republic of China, Lou Tsengtsiang, Chung-ching, First Class Chia-ho Decoration, and Minister of Foreign Affairs; and His Majesty the Emperor of Japan, Hioki Eki, Jushii, Second Class of the Imperial Order of the Sacred Treasure, Minister Plenipotentiary and Envoy Extraordinary;

Who, after having communicated to each other their full powers, and found them to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

The two high contracting parties agree that the term of lease of Port Arthur and Dalny and the terms of the South Manchuria Railway and the Antung-Mukden Railway, shall be extended to 99 years.

ARTICLE II

Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

ARTICLE III

Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

ARTICLE IV

In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government may give its permission.

ARTICLE V

The Japanese subjects referred to in the preceding three articles, besides being required to register with the local authorities passports which they must procure under the existing regulations, shall also submit to the police laws and ordinances and taxation of China.

Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by the Japanese consul; those in which the defendants are Chinese shall be tried and adjudicated by Chinese authorities. In either case an officer may be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by delegates of both nations conjointly in accordance with Chinese law and local usage.

When, in future, the judicial system in the said region is completely

reformed, all civil and criminal cases concerning Japanese subjects shall be tried and adjudicated entirely by Chinese law courts.

ARTICLE VI

The Chinese Government agrees, in the interest of trade and for the residence of foreigners, to open by China herself, as soon as possible, certain suitable places in Eastern Inner Mongolia as commercial ports.

ARTICLE VII

The Chinese Government agrees speedily to make a fundamental revision of the Kirin-Changchun Railway Loan Agreement, taking as a standard the provisions in railway loan agreements made heretofore between China and foreign financiers.

When in future, more advantageous terms than those in existing railway loan agreements are granted to foreign financiers in connection with railway loans, the above agreement shall again be revised in accordance with Japan's wishes.

ARTICLE VIII

All existing treaties between China and Japan relating to Manchuria shall, except where otherwise provided for by this treaty, remain in force.

ARTICLE IX

The present treaty shall come into force on the date of its signature. The present treaty shall be ratified by His Excellency the President of the Republic of China and His Majesty the Emperor of Japan, and the ratifications thereof shall be exchanged at Tokio as soon as possible.

In witness whereof the respective Plenipotentiaries of the two high contracting Parties have signed and sealed the present treaty, two copies in the Chinese language and two in Japanese.

Done at Peking this twenty-fifth day of the fifth month of the fourth year of the Republic of China, corresponding to the same day of the same month of the fourth year of Taisho.

EXCHANGE OF NOTES RESPECTING THE TERMS OF LEASE OF PORT ARTHUR AND DALNY AND THE TERMS OF SOUTH MANCHURIAN AND ANTUNG-MUKDEN RAILWAYS

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to state that, respecting the provisions contained in Article 1 of the treaty relating to South Manchuria and Eastern Inner Mongolia, signed this day, the term of lease of Port-Arthur and Dalny shall expire in the 86th year of the Republic or 1997. The date for restoring the South Manchuria Railway to China shall fall due in the 91st year of the Republic or 2002. Article 12 in the original South Manchurian Railway Agreement providing that it may be redeemed by China after 36 years from the day on which the traffic is opened is hereby cancelled. The term of the Antung-Mukden Railway shall expire in the 96th year of the Republic or 2007.

I avail, etc.,

(Signed) Lou Tseng-tsiang.

His Excellency, Hioki Eki, Japanese Minister.

Reply

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you stated that respecting the provisions contained in Article 1 of the treaty relating to South Manchuria and Eastern Inner Mongolia, signed this day, the term of lease of Port Arthur and Dalny shall expire in the 86th year of the Republic or 1997. The date for restoring the South Manchurian Railway to China shall fall due in the 91st year of the Republic or 2002. Article 12 in the original South Manchurian Railway Agreement providing that it may be redeemed by China after 36 years from the day on which the traffic is opened, is hereby

cancelled. The term of the Antung-Mukden Railway shall expire in the 96th year of the Republic or 2007.

In reply I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
LOU TSENG-TSIANG,
Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE OPENING OF PORTS IN EASTERN INNER MONGOLIA

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to state that the places which ought to be opened as commercial ports by China herself, as provided in Article 6 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, will be selected, and the regulations therefor will be drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan.

I avail, etc., (Signed) Lou Tseng-tsiang.

His Excellency,
Hioki Eki,
Japanese Minister.

Reply

Peking the 25th day of the 5th month of the 4th year of Taisho

Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you stated "that the places which ought to be opened as commercial ports by China herself, as provided in Article 6 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, will be selected, and the regulations therefor, will be

drawn up, by the Chinese Government itself, a decision concerning which will be made after consulting the Minister of Japan."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tslang,
Minister of Foreign Affairs.

SOUTH MANCHURIA

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to state that Japanese subjects shall, as soon as possible, investigate and select mines in the mining areas in South Manchuria specified hereinunder, except those being prospected for or worked, and the Chinese Government will then permit them to prospect or work the same; but before the mining regulations are definitely settled, the practice at present in force shall be followed.

Fengtien:		
Locality	District	Mineral
Niu Hsin T'ai	Pen-hsi	Coal
Tien Shih Fu Kou	· "	u ·
Sha Sung Kang	Hai-lung	"
T'ieh Ch'ang	Tung-hua	"
Nuan Ti T'ang	Chin	. "
An Shan Chan region	From Liaoyang to Pen-hsi	Iron
Kirin (Southern portion)	, .	
Sha Sung Kang	Ho-lung	Coal and Iron
Kang Yao	Chi-lin (Kirin)	Coal
Chia P'i Kou	Hua-tien	Gold
	I avail, etc.,	
,	(Signed) Lou Ts	ENG-TSIANG.
Uia Erraellan err	· -	

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency.

I have the honor to acknowledge the receipt of your excellency's note of this day respecting the opening of mines in South Manchuria, stating: Japanese subjects shall, as soon as possible, investigate and select mines in the mining areas in South Manchuria specified hereinunder, except those being prospected for or worked, and the Chinese Government will then permit them to prospect and / or work the same; but before the mining regulations are definitely settled, the practice at present in force shall be followed.

F	'en	œ	ti	en	
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r.engmen.		
Locality	District	$\mathbf{Mineral}$
1. Niu Hsin T'ai	Pen-hsi	Coal
2. Tien Shih Fu Kou	"	"
3. Sha Sung Kang	Hai-lung	. "
4. T'ieh Ch'ang	Tung-hua	"
5. Nuan Ti T'ang	Chin	"
6. An Shan Chan region	From Liaoyang to Pen-hsi	Iron
Kirin (southern portion)		
1. Sha Sung Kang	Ho-lung	Coal and Iron
2. Kang Yao	Chi-lin (Kirin)	Coal
3. Chia P'i Kou	Hua-tien	Gold
	I avail, etc.,	
His Excellency,		Нюкі Екі.
Lou Tseng-tsiang,	,	•

Minister of Foreign Affairs of the Republic of China.

EXCHANGE OF NOTES RESPECTING RAILWAYS AND TAXES IN SOUTH MAN-CHURIA AND EASTERN INNER MONGOLIA

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China Monsieur le Ministre,

In the name of my Government, I have the honor to make the following declaration to your Government:

China will hereafter provide funds for building necessary railways in South Manchuria and Eastern Inner Mongolia; if foreign capital is required China may negotiate for a loan with Japanese capitalists first; and further, the Chinese Government, when making a loan in future on the security of the taxes in the above-mentioned places (excluding the salt and customs revenue which have already been pledged by the Chinese Central Government) may negotiate for it with Japanese capitalists first.

I avail, etc.,
(Signed) Lou Tseng-tsiang.

His Excellency, Hioki Eki.

Japanese Minister.

Reply

Peking, the 25th day of the 5th month of the 4th year of Taisho Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date respecting railways and taxes in South Manchuria and Eastern Inner Mongolia in which you stated:

"China will hereafter provide funds for building necessary railways in South Manchuria and Eastern Inner Mongolia; if foreign capital is required China may negotiate for a loan with Japanese capitalists first; and further, the Chinese Government, when making a loan in future on the security of taxes in the above-mentioned places (excluding the salt and customs revenue which has already been pledged by the Chinese Central Government) may negotiate for it with Japanese capitalists first.

In reply I beg to state that I have taken note of the same.

I avail, etc.,

His Excellency,

(Signed) HIOKI EKI.

LOU TSENG-TSIANG,
Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE EMPLOYMENT OF ADVISERS IN SOUTH MANCHURIA

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China Monsieur le Ministre.

In the name of the Chinese Government, I have the honor to make the following declaration to your Government:

"Hereafter, if foreign advisers or instructors on political, financial, military or police matters are to be employed in South Manchuria, Japanese may be employed first."

I avail, etc.,

His Excellency,

(Signed) Lou Tseng-tslang.

HIOKI EKI,

Japanese Minister.

Reply

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency.

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you made the following declaration in the name of your Government:

"Hereafter if foreign advisers or instructors in political, financial, military or police matters are to be employed in South Manchuria, Japanese may be employed first."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

His Excellency,

(Signed) Hioki Eki.

LOU TSENG-TSIANG,

Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE EXPLANATION OF "LEASE BY NEGOTIATION" IN SOUTH MANCHURIA

Note

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency.

I have the honor to state that the term "lease by negotiation" contained in Article 2 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day shall be understood to imply a long-term lease of not more than thirty years and also the possibility of its unconditional renewal.

I avail, etc., (Signed) HIOKI EKI.

His Excellency,

Lou Tseng-tsiang,

Minister of Foreign Affairs.

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you state:

"The term 'lease by negotiation' contained in Article 2 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day shall be understood to imply a long-term lease of not more than thirty years and also the possibility of its unconditional renewal."

In reply I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) Lou Tseng-tsiang.

His Excellency,
Hioki Eki,
Japanese Minister.

EXCHANGE OF NOTES RESPECTING THE ARRANGEMENT FOR POLICE LAWS AND ORDINANCES AND TAXATION IN SOUTH MANCHURIA AND EASTERN INNER MONGOLIA

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre.

I have the honor to state that the Chinese authorities will notify the Japanese consul of the police laws and ordinances and the taxation to which Japanese subjects shall submit according to Article 5 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day so as to come to an understanding with him before their enforcement.

I avail, etc., (Signed) Lou Tseng-tsiang.

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you state:

"The Chinese authorities will notify the Japanese consul of the police laws and ordinances and the taxation to which Japanese subjects shall submit according to Article 5 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day so as to come to an understanding with him before their enforcement."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
LOU TSENG-TSIANG,
Minister of Foreign Affairs.

THE POSTPONEMENT OF ARTICLES 2, 3, 4 AND 5 OF THE TREATY RESPECTING SOUTH MANCHURIA AND EASTERN INNER MONGOLIA

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to state that, inasmuch as preparations have to be made regarding Articles 2, 3, 4 and 5 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, the Chinese Government proposes that the operation of the said articles be postponed for a period of three months beginning from the date of the signing of the said treaty.

I hope your Government will agree to this proposal.

I avail, etc.,

(Signed) LOU TSENG-TSIANG.

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you stated that, "inasmuch as preparations have to be made regarding Articles 2, 3, 4 and 5 of the treaty respecting South Manchuria and Eastern Inner Mongolia signed this day, the Chinese Government proposes that the operation of the said articles be postponed for a period of three months beginning from the date of the signing of the said treaty."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

(Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tslang,
Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE MATTER OF HANYEHPING

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to state that if in future the Hanyehping Company and the Japanese capitalists agree upon co-operation, the Chinese Government, in view of the intimate relations subsisting between the Japanese capitalists and the said company, will forthwith give its permission. The Chinese Government further agrees not to confiscate the said company, nor, without the consent of the Japanese capitalists to convert it into a state enterprise, nor cause it to borrow and use foreign capital other than Japanese.

I avail, etc., (Signed) Lou Tseng-tsiang.

Peking, the 25th day of the 5th month of the 4th year of Taisho

Excellency,

I have the honor to acknowledge the receipt of your excellency's note of this day's date in which you state:

"If in future the Hanyehping Company and the Japanese capitalists agree upon co-operation, the Chinese Government, in view of the intimate relations subsisting between the Japanese capitalists and the said company, will forthwith give its permission. The Chinese Government further agrees not to confiscate the said company, nor, without the consent of the Japanese capitalists to convert it into a state enterprise, nor cause it to borrow and use foreign capital other than Japanese."

In reply, I beg to state that I have taken note of the same.

I avail, etc.,

His Excellency,

(Signed) HIOKI EKI.

LOU TSENG-TSIANG,
Minister of Foreign Affairs.

EXCHANGE OF NOTES RESPECTING THE FUKIEN QUESTION

Note

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Excellency,

A report has reached me to the effect that the Chinese Government has the intention of permitting foreign nations to establish, on the coast of Fukien Province, dock-yards, coaling stations for military use, naval bases, or to set up other military establishments; and also of borrowing foreign capital for the purpose of setting up the above-mentioned establishments.

I have the honor to request that your excellency will be good enough to give me reply stating whether or not the Chinese Government really entertains such an intention.

I avail, etc., (Signed) HIOKI EKI.

His Excellency,
Lou Tseng-tsiang,
Minister of Foreign Affairs.

Peking, the 25th day of the 5th month of the 4th year of the Republic of China

Monsieur le Ministre,

I have the honor to acknowledge the receipt of your excellency's note of this day's date which I have noted.

In reply I beg to inform you that the Chinese Government hereby declares that it has given no permission to foreign nations to construct, on the coast of Fukien Province, dock-yards, coaling stations for military use, naval bases, or to set up other military establishments; nor does it entertain an intention of borrowing foreign capital for the purpose of setting up the above-mentioned establishments.

I avail, etc.,

His Excellency,

(Signed) LOU TSENG-TSIANG.

HIOKI EKI,

Japanese Minister.

exchange of notes respecting the accession of Japan to the declaration of september 5, 1914, between the united kingdom, france, and russia, engaging not to conclude peace separately during the present european war $^{\rm 1}$

London, October 19, 1915

No. 1

Sir E. Grey and the French and Russian Ambassadors to the Japanese Ambassador

(Translation)

Your Excellency,

London, October 19, 1915.

We, the undersigned, duly authorized thereto by our respective Governments, have the honor to invite the Imperial Japanese Government to signify, through your excellency, their adherence to the Declara-

¹ Great Britain, Treaty Series, 1915, No. 1.

tion between the French, Russian, and British Governments, signed at London on the 5th September, 1914, the text of which reads as follows:—

The undersigned, duly authorized thereto by their respective Governments, hereby declare as follows:

The French, Russian, and British Governments mutually engage not to conclude peace separately during the present war.

The three Governments agree that when terms of peace come to be discussed no one of the Allies will demand conditions of peace without the previous agreement of each of the other Allies.

In faith whereof the undersigned have signed this Declaration and have affixed thereto their seals.

Done at London, in triplicate, this 5th day of September, 1914.

(L. S.) Paul Cambon,

Ambassador Extraordinary

and Plenipotentiary of the

French Republic.

(L. S.) Benckendorff,
Ambassador Extraordinary
and Plenipotentiary of
His Majesty the Emperor
of Russia.

(L. S.) E. GREY,

His Britannic Majesty's

Secretary of State for Foreign Affairs.

We have, &c.

Paul Cambon. Benckendorff. E. Grey.

No. 2

The Japanese Ambassador to Sir E. Grey and the French and Russian Ambassadors

> Japanese Embassy, London, October 19, 1915.

Your Excellencies,

I have the honor to acknowledge the receipt of your note of this day's date, in which, in the name and with the authority of your respective Governments, you invite the Imperial Japanese Government to signify their adherence to the Declaration between the French, Russian, and British Governments, signed at London on the 5th September, 1914, the text of which reads as follows:

The undersigned, duly authorized thereto by their respective Governments, hereby declare as follows:

The French, Russian, and British Governments mutually engage not to conclude peace separately during the present war.

The three Governments agree that when terms of peace come to be discussed no one of the Allies will demand conditions of peace without the previous agreement of each of the other Allies.

In faith whereof the undersigned have signed this Declaration and have affixed thereto their seals.

Done at London, in triplicate, this 5th day of September, 1914.

(L. S.) PAUL CAMBON,

Ambassador Extraordinary

and Plenipotentiary of the

French Republic.

(L. S.) Benckendorff,
Ambassador Extraordinary
and Plenipotentiary of
His Majesty the Emperor
of Russia.

(L. S.) E. GREY,

His Britannic Majesty's

Secretary of State for Foreign Affairs

In reply, I have the honor to acquaint your excellencies that the Imperial Japanese Government have authorized me to inform you of their full and complete adherence to the terms of this Declaration.

I have, &c.

K. Inouyé.

CONVENTION BETWEEN THE UNITED KINGDOM AND FRANCE RELATING
TO PRIZES CAPTURED DURING THE PRESENT EUROPEAN WAR 1

Signed at London, November 9, 1914; ratifications exchanged December 21, 1914

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and the President of the French Republic, being desirous to determine the jurisdiction to which the adjudication of joint captures which may be made during the course of the present war by the naval forces of the allied countries shall belong, or of captures which may be made of

¹ Great Britain, Treaty Series, 1915, No. 2.

merchant vessels belonging to nationals of one of the countries by the cruisers of the other; and being desirous to regulate at the same time the mode of distribution of the proceeds of joint captures, have named as their plenipotentiaries for that purpose, that is to say:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: The Right Honorable Sir Edward Grey, a Baronet of the United Kingdom, a Member of Parliament, His Majesty's Principal Secretary of State for Foreign Affairs; and

The President of the French Republic: His Excellency M. Paul Cambon, Ambassador of the French Republic at London;

Who, having reciprocally communicated their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE 1

The adjudication of neutral or enemy prizes shall belong to the jurisdiction of the country of the capturing vessel, without distinguishing whether that vessel was placed under the orders of the naval authorities of one or other of the allied countries.

ARTICLE 2

In case of the capture of a merchant vessel of one of the allied countries, the adjudication of such capture shall always belong to the jurisdiction of the country of the captured vessel. In such case the cargo shall be dealt with, as to the jurisdiction, in the same manner as the vessel.

When a merchant vessel of one of the allied countries, whose original destination was an enemy port, and which is carrying an enemy or neutral cargo liable to capture, has entered a port of one of the allied countries, the prize jurisdiction of that country is competent to pronounce the condemnation of the cargo. In such case the value of the goods, after deducting the necessary expenses, shall be placed to the credit of the Government of the allied country whose flag the merchant vessel flies.

ARTICLE 3

When a joint capture shall be made by the naval forces of the allied countries, the adjudication thereof shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

ARTICLE 4

When a capture shall be made by a cruiser of one of the allied nations in the presence and in the sight of a cruiser of the other, such cruiser having thus contributed to the intimidation of the enemy and encouragement of the captor, the adjudication thereof shall belong to the jurisdiction of the actual captor.

ARTICLE 5

In case of condemnation under the circumstances described in the preceding articles:

- 1. If the capture shall have been made by vessels of the allied nations whilst acting in conjunction, the net proceeds of the prize, after deducting the necessary expenses, shall be divided into as many shares as there were men on board the capturing vessels, without reference to rank, and the shares of each ally as so ascertained shall be paid and delivered to such person as may be duly authorized on behalf of the allied Government to receive the same; and the allocation of the amount belonging to each vessel shall be made by each Government according to the laws and regulations of the country.
- 2. If the capture shall have been made by cruisers of one of the allied nations in the presence and in sight of a cruiser of the other, the division, the payment, and the allocation of the net proceeds of the prize, after deducting the necessary expenses, shall likewise be made in the manner above mentioned.
- 3. If, in accordance with Article 2, paragraph 1, a capture, made by a cruiser of one of the allied countries, shall have been adjudicated by the courts of the other, the net proceeds of the prize, after deducting the necessary expenses, shall be made over in the same manner to the Government of the captor, to be distributed according to its laws and regulations.

ARTICLE 6

The commanders of the vessels of war of the allied countries shall, with regard to the sending in and delivering up of prizes, conform to the instructions which are annexed to the present convention, and which the two Governments reserve to themselves the right to modify by common consent, if it should become necessary.

ARTICLE 7

When, with a view to the execution of the present convention, it shall become necessary to proceed to the valuation of a captured vessel of war, the calculation shall be according to the real value of the same; and the allied Government shall be entitled to delegate one or more competent officers to assist in the valuation. In case of disagreement, it shall be decided by lot which officer shall have the casting voice.

ARTICLE 8

The present convention shall be ratified, and the ratifications shall be exchanged in London as soon as possible.

ARTICLE 9

The non-signatory allied Powers shall be invited to accede to the present convention.

A Power which desires to accede shall notify its intention in writing to the Government of His Britannic Majesty, who shall immediately forward to the Government of the French Republic a duly certified copy of the notification.

In witness whereof the respective plenipotentiaries have signed the present convention, and have affixed thereto the seals of their arms.

Done at London, in duplicate, the 9th day of November, 1914.

(L. S.) E. GREY.

(L. S.) PAUL CAMBON.

ANNEX

Instructions to the Commanders of Ships of War of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the French Republic

You will find enclosed a copy of a convention which was signed on the 9th November, 1914, between His Majesty the King of the United Kingdom of Great Britain and Ireland and the President of the French Republic, regulating the jurisdiction to which shall belong the adjudication of the captures made by the allied naval forces, or of the captures of merchant vessels belonging to the nationals of either of the two coun-

tries which shall be made by the cruisers of the other, as likewise the mode of distribution of the proceeds of such joint captures.

In order to ensure the execution of this convention, you will conform yourself to the following instructions:

ARTICLE 1

Whenever, in consequence of a joint action, you are required to draw up the report or *proces-verbal* of a capture, you will take care to specify, with exactness, the names of the ships of war present during the action, as well as the names of their commanding officers, and, as far as possible, the number of men embarked on board those ships at the commencement of the action, without distinction of rank.

You will deliver a copy of that report or procès-verbal to the officer of the allied Power who shall have had the superior command during the action, and you will conform yourself to the instructions of that officer, as far as relates to the measures to be taken for the conduct and the adjudication of the joint captures so made under his command.

If the action has been commanded by an officer of your nation, you will conform yourself to the regulations of your own country, and you will confine yourself to handing over to the highest officer in rank of the allied Power who was present during the action, a certified copy of the report or of the *procès-verbal* which you shall have drawn up.

ARTICLE 2

When you shall have effected a capture in presence and in sight of an allied ship of war, you will mention exactly, in the report which you will draw up when the capture is a ship of war, and in the report or procèsverbal of the capture when the prize is a merchant vessel, the number of men on board your ship at the commencement of the action, without distinction of rank, as well as the name of the allied ship of war which was in sight, and, if possible, the number of men embarked on board that ship, likewise without distinction of rank. You will deliver a certified copy of your report, or procès-verbal, to the commander of that ship.

ARTICLE 3

Whenever, in the case of a violation of a blockade, of the transport of contraband articles, of land or sea troops of the enemy, or of official despatches from or for the enemy, you will find yourself under the necessity of stopping and seizing a merchant vessel of the allied nation, you will take care—

- 1. To draw up a report (or *procès-verbal*), stating the place, the date, and the motive of the arrest, the name of the vessel, that of the captain, the number of the crew; and containing besides an exact description of the state of the vessel and her cargo;
- 2. To collect and place in a sealed packet, after having made an inventory of them, all the ship's papers, such as registers, passports, charterparties, bills of lading, invoices, and other documents calculated to prove the nature and the ownership of the vessel and of her cargo;
 - 3. To place seals upon the hatches:
- 4. To place on board an officer, with such number of men as you may deem advisable, to take charge of the vessel, and to ensure its safe conduct;
- 5. To send the vessel to the nearest port belonging to the Power whose flag it carried;
- 6. To deliver up the vessel to the authorities of the port to which you shall have taken her, together with a duplicate of the report (or *procèsverbal*), and of the inventory above mentioned, and with the sealed packet containing the ship's papers.

ARTICLE 4

The officer who conducts the captured vessel will procure a receipt proving his having delivered her up, as well as his having delivered the sealed packet and the duplicate of the report (or *procès-verbal*) and of the inventory above mentioned.

ARTICLE 5

In case of distress, if the captured vessel is not in a fit state to continue its voyage, or in case the distance should be too great, the officer charged to conduct to a port of the allied Power a prize made on the merchant service of that Power, may enter a port of his own country, and he will deliver his prize to the local authority without prejudice to the ulterior measures to be taken for the adjudication of the prize. He will take care, in that case, that the report or procès-verbal, and the inventory which he shall have drawn up, as well as the sealed packet containing the ship's papers, be sent exactly to the proper court of adjudication.

E. GREY.

PAUL CAMBON.

ACCESSION OF RUSSIA TO THE CONVENTION OF NOVEMBER 9, 1914, BETWEEN THE UNITED KINGDOM AND FRANCE RELATING TO PRIZES CAPTURED DURING THE PRESENT EUROPEAN WAR ¹

London, March 5, 1915

(1)

The Russian Ambassador to Sir E. Grey

(Translation)

Imperial Russian Embassy, London, March 5, 1915.

Sir,

In acceding, in the name of my Government, to the convention concluded between Great Britain and France on the 9th November, 1914, I desire to call your excellency's attention to the fact that, according to Russian legislation, the condemnation of enemy cargoes on board merchant vessels of the allied states which enter Russian ports does not appertain to prize court jurisdiction, but is pronounced by the Imperial administrative authorities. It is consequently in this sense that Article 2, paragraph 2, of the aforesaid convention should be interpreted so far as regards Russia.

In requesting your excellency to take note of this communication in the name of His Britannic Majesty's Government, I have, &c.

BENCKENDORFF.

Declaration

The undersigned, Ambassador Extraordinary and Plenipotentiary of His Majesty the Emperor of Russia, duly authorized to that effect, hereby declares, in the name of his Government, their accession to the convention concluded between Great Britain and France on the 9th November, 1914.

In witness whereof the undersigned has signed the present Declaration.

BENCKENDORFF.

London, March 5, 1915.

¹ Great Britain, Treaty Series, 1915, No. 4.

(2)

Sir E. Grey to the Russian Ambassador

Your Excellency,

Foreign Office, March 12, 1915.

I have the honor to acknowledge the receipt of your excellency's note of the 5th instant, conveying the formal accession of Russia to the convention relating to prizes captured during the present war, which was concluded between Great Britain and France on the 9th November, 1914.

Due note has been taken of this communication, a certified copy of which will, in accordance with Article 9 of the convention, be forwarded by His Majesty's Government to the Government of the French Republic.

I have, &c.

His Excellency the

E. GREY.

Count Benckendorff, &c.

RULES AND REGULATIONS FOR THE OPERATION AND NAVIGATION OF THE PANAMA CANAL AND APPROACHES THERETO, INCLUDING ALL WATERS UNDER ITS JURISDICTION

Executive Order, No. 1990, July 9, 1914

GENERAL REGULATIONS

- 1. The following Rules and Regulations pertaining to the Operation and Navigation of the Panama Canal are published for the benefit of all vessels coming within its jurisdiction, and masters of vessels, or their agents, one or both, desiring to use the Canal and terminal ports, or any of the waters, must observe them.
- 2. Any person violating any of the provisions of the rules and regulations established hereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five hundred dollars (\$500.00), or by imprisonment not to exceed six months, or by both such fine and imprisonment, at the discretion of the court.
- 3. After entering, no vessel shall leave one of the terminal ports for the purpose of passing further into the Canal until authority in proper form has been given by the Captain of the Port.

- 4. The Canal authorities may deny any vessel the privilege of passing through the Canal the cargo of which is of such a nature that it might, in any way, endanger the locks, wharves, equipment, or any part of the Canal, by being explosive or highly inflammable. The further right is reserved to them to impose such safety regulations as they may see fit upon any such vessel while in Canal waters.
- 5. Vessels desiring to pass through the Canal, whose cargoes consist of high explosives, should, when practicable, so report and obtain permission from the Canal authorities to use the Canal before leaving their ports of departure.
- 6. In any case where the condition of the cargo, hull, or machinery is such that it is liable to endanger or obstruct the Canal, permission to pass through may be refused until steps have been taken to remedy the defect.
- 7. All vessels having a specially dangerous cargo, such as explosives or oils of any kind, shall fly a red flag by day at the masthead, and hoist a red lantern at night.
- 8. The following information must be ready for immediate delivery upon the arrival of the ship in port; name of vessel, nationality, name of master, date and time of arrival, port of departure, date of departure, port of destination, length, draft, beam, registered tonnage, crew and passenger list, and character of cargo; the bill of health should also be ready for presentation.
- 9. The Canal authorities may dispatch vessels through the Canal in any order and at any time they may see fit; priority of arrival at a terminal does not give any vessel the right to pass through the Canal ahead of another that may arrive later, although this will be a consideration in determining the order of passage.
- 10. The Canal authorities may hold a vessel for the purpose of investigating any report made against her by the proper persons, for the violation of the rules of the Canal or the laws of the Canal Zone, or of the United States, or for the investigation or adjustment of any claims or disputes that may arise on either side; but no vessel shall have any claim for damages against the Canal for any delay in consequence thereof.

Pilots and Movements of Vessels

11. Vessels will not be allowed to enter or depart from terminal ports between sundown and sunrise without having obtained permission from

the proper authorities. This will not be interpreted to mean that a vessel in danger or distress will be prohibited from entering a terminal port at any time in case of necessity or emergency; but such vessel should, when practicable, give due notice in advance, by radio or otherwise, and obtain a pilot if possible; nor shall this be interpreted to prevent a vessel from anchoring just inside of the breakwater in the outer harbor at the Atlantic terminal, or to seaward of the entrance to the dredged channel on the Pacific side, between sundown and sunrise.

- 12. Except when exempted from the operation of this rule by the Governor of the Panama Canal, no vessel will be allowed to pass through the Canal, enter or leave a terminal port, maneuver, shift berth, go along-side of or leave any wharf or dock in canal waters without having a regularly authorized government pilot on board.
- 13. Pilotage for vessels in transit through the Canal will be free, nor will they be charged pilotage for entering or leaving a terminal port when it is for the sole purpose of passing through the Canal; but should any such vessel, while in Canal waters, discharge or receive freight or passengers, or take on board supplies, provisions, stores, or fuel, or remain for the purpose of effecting repairs, or make either terminal a port of call, she may be liable for entrance or departure pilotage, as the Canal authorities may direct.
- 14. Pilotage in and out of the Atlantic and Pacific terminals of the Canal is compulsory, and all vessels, unless otherwise exempted, will be compelled to take a regular government pilot upon entering or leaving. The fact that the master or any officer of any vessel holds a pilot's license for any of the waters of the Canal Zone will not authorize the vessel to enter without taking a government pilot.
- 15. No person, steamer, company or corporation will be allowed to maintain or employ pilots in Canal waters for the exclusive use of their own or any other vessels; all pilots, without exception, must be duly authorized and licensed by the Canal authorities and be in the employ of the Canal. This shall not be interpreted to mean that the Canal authorities shall be prohibited from issuing restricted pilot licenses for small craft in Canal waters, or any other that they may see fit.
- 16. Pilots will meet incoming vessels inside of the breakwaters at the Atlantic terminal, and outside of the seaward end of the dredged channel at the Pacific terminal; should there be any delay, vessels may anchor just inside of the Atlantic breakwaters or to seaward of the Canal entrance on the Pacific side, make the usual signal for a pilot and await his

arrival. Should a vessel desire a pilot to meet her outside of the Atlantic breakwaters, she should remain there and make signal to this effect.

- 17. Whenever practicable, vessels should send notification of the probable time of their arrival, by radio or otherwise, so that pilots may meet them promptly.
- 18. All vessels entering port must take the berths or docks assigned them by the Captain of the Port, and they will not be allowed to shift berths or moorings without the proper permission.
- 19. Except in the prescribed limits in Gatun Lake and adjacent waters, no vessel will be allowed to anchor in any part of the Canal, nor on any of the marked ranges; should an emergency arise wherein it may be necessary to let go an anchor, whenever practicable the pilot should be consulted before doing so.
- 20. At all times when a vessel is under way in the terminal ports or in transit through the Canal, except while passing through the locks, with a duly accredited pilot on board, the captain or master of a vessel will be held solely responsible for the safety, handling, and proper navigation of the vessel; the pilot is to be considered as being on board solely in an advisory capacity, but masters of vessels must abide by the rules and regulations of the Canal, as interpreted to them by the pilots.
- 21. The pilot shall be freely consulted at all times to insure safety in navigation, and that no accident or damage result from ignorance on the part of the master or officers of the vessel in transit; and should any such master, officer, or person connected with the ship, give or cause to be given, any order, or direct any change of speed or direction of the ship on his own initiative, without the knowledge of the pilot, which may result in damage to his own or any other vessel, dredger, or property of any kind, or endanger or block the Canal, or any of its equipment, he will be held strictly responsible, and the vessel itself may be held by legal process until settlement in full shall have been made to cover any loss or damage that may have resulted in consequence thereof.
- 22. Inasmuch as every vessel has its own individual peculiarities in handling, answering her helm, variation in headway due to speed, it shall be the duty of the master of the vessel, or his qualified representative, to be present at all times on the bridge of the ship to keep the pilot informed in regard to these matters, so that the pilot may be best qualified to give advice in regard to navigating the ship safely.
- 23. The pilot should not only be freely consulted at all times on matters relating to the navigation of the ship, but to the rules and regulations

pertaining to the same, to signals, locks, weather, or other matters of importance relating to the movements of the vessel. While on board he is the properly qualified representative of the Canal authorities in these matters, and should any accident or damage result from failure to consult him, or from not following his advice, the vessel shall be held responsible for such accident or damage.

- 24. The pilot must inform the master or captain that his (the pilot's) experience and knowledge of the Canal is at his (the master's or captain's) disposal and that, inasmuch as he (the pilot) is not in a position to know the defects, difficulties, or eccentricities of the vessel in maneuvering, while getting under way or in transit, the responsibility for navigating the vessel is entirely in the hands of the master or captain, except when passing through the locks.
- 25. When in the opinion of the pilot, the master or captain, or their representatives, shall fail to follow his advice and thereby endanger his own or any other vessel, or any part of the Canal or its equipment, the pilot shall then direct the master or captain of such vessel to stop, anchor, or moor, until the facts have been laid before the Canal authorities.
- 26. Pilots shall conform to such other rules as shall be prescribed for their guidance by the Governor of the Panama Canal.

Preparation for and Transit through the Canal

- 27. Vessels shall, at all times, when under way in Canal waters, when passing through the locks, or moored temporarily in transit through the Canal, keep a full watch on deck and in the engine room, in the same manner in which they are kept at sea.
- 28. While a vessel is under way in Canal waters, no one shall be allowed on the bridge or in the pilot house except the pilot and other representatives of the Canal, the master and such officers and crew of the ship as may be necessary for her management, direction and safety. Under no condition will any passenger or any other unauthorized person be allowed on the bridge or in the pilot house.
- 29. Before beginning the passage of the Canal, vessels will be required to have hawsers, lines and fenders ready for passing through the locks, for warping, towing or mooring as the case may be; and will have both anchors ready for letting go. During the passage, at all times while the vessel is under way or moored against the lock walls, her deck winches, capstans or other power for handling lines, as well as her mooring bits,

deck chocks, cleats, hawse-pipes, etc., shall be ready for handling ship to the exclusion of all other work.

- 30. At least one boat for handling lines shall be kept ready for lowering.
- 31. Should any part of a vessel's engines, machinery, condensers, boilers, shafts, propellers, steering gear, valves, hull, equipment, or anything else, be in such condition that it might, through failure, interfere to prevent or retard a vessel's passage through the Canal, such fact must be presented to the Captain of the Port before a vessel will be allowed to enter.
- 32. All sailing craft, vessels whose machinery may be in bad condition or disabled, and vessels without motive power, must be towed through all parts of the Canal lying between the entrances, for which service an additional charge will be imposed.
- 33. When passing through the locks, vessels will habitually be towed by Canal equipment. In exceptional instances, as when such equipment is not available, or in case of very small vessels, special permission to use the vessel's own motive power may be given by the Governor. Without such special permission, the vessel's motive power will not be used while passing the locks.
- 34. Upon approaching the lock, vessels will moor against the middle approach wall with the bow at least fifty feet from the nearest fender chain. They will then be taken in charge by the lock force and made ready for passage through the locks.
- 35. When these regulations are complied with in all respects, responsibility for handling vessels through the locks will rest with the Canal operating force, but the crew and officers will be required to render such assistance as may be necessary to supplement the lock force. To assist in insuring safety of passage, the lock force will take complete supervision of the engine room, even to the extent of sealing the engines if the Governor shall so direct.
- 36. The Governor of the Panama Canal is hereby authorized to issue from time to time orders regulating the procedure in passing vessels through the locks, and the details of the supervision which will be exercised by the lock force. Such orders when issued shall have the force of these regulations.
- 37. In cases where special permission to use the vessel's own motive power has been given by the Governor, he shall indicate what precautions must be taken to insure safety in passing through the locks. His

directions as to such precautions must be observed strictly and in every detail.

- 38. Vessels will be liable for any damage to Canal structures or equipment while passing through the locks, caused through disregard or non-compliance of these rules and regulations or any orders which may be issued by the Governor to regulate such passage. The Panama Canal will not be held liable for any damage to the vessel occasioned by such disregard or non-compliance.
- 39. Masters of vessels will not allow anyone to take passage on their ships while passing through the Canal, except the ship's officers, crew and duly accredited passengers, and such officials and other persons as may be designated by the Canal authorities.

Radio Communication and Report

- 40. As soon as radio communication can be established with the Canal, vessels should report their names, nationality, length, draft, tonnage, whether or not they desire to pass through the Canal, require coal, provisions, supplies, repairs, to go alongside of a wharf, the use of tugs, probable time of arrival, length of stay in port, or any other matters of importance or interest. If this information has been previously communicated, through agents or otherwise, to the Captain of the Port, it will not be necessary to report by radio; but the probable time of arrival should always be sent.
- 41. Control of radio communication is entirely in the hands of the radio shore stations. No vessel will be allowed to interfere in the slightest degree with the Canal radio stations; upon an order being received by a vessel at any time while within the waters under the control of the Canal to discontinue using radio, even if in the midst of transmission of a message, she shall immediately comply.
- 42. Upon a ship's arriving within the 15-mile limit, and until leaving the 15-mile limit of the Canal Zone, she shall transmit only with low power, not exceeding ½ K. W.
- 43. Messages to stations will be sent only to Colon station (NAX) when in Gatun locks and to northward thereof, and only to Balboa station (NPJ) when in Miraflores locks and to southward thereof; between these two points ships may work to either station, preferably to the nearer one; the high power station (Darien) at Radio, will not handle commercial work and will not be called for Canal business except in case of emergency.

- 44. All messages between ships in the Canal Zone and ships at sea must be forwarded through the nearer shore station.
- 45. Messages from ships in the Caribbean Sea for ships in the Pacific waters, or vice versa, shall be routed through the Canal Zone shore stations.
- 46. All vessels fitted with radio, after leaving the terminal harbor to pass through the Canal, shall keep an operator on watch until the further terminal harbor has been reached; this applies to the time when they are anchored in Gatun Lake, while passing through the locks, or moored to the lock walls, or to any of the wharves in the Canal proper, as well as when they are under way. Messages relating to the ship's movements and the Canal business shall take precedence over all commercial messages.
- 47. Pilots on vessels passing through the Canal shall have the right to use a vessel's radio freely for the transaction of the Canal business.
- 48. Under the direction of the pilots, vessels will from time to time report their progress through the Canal; accidents to machinery, propellers, steering gear, equipment, or anything else that may delay them or require assistance; any sickness or casualties that require medical attendance from Canal officials; or any other matters of importance that may arise.
- 49. No charges will be imposed against the Canal by vessels receiving or sending messages in relation to Canal business.¹
- 50. No vessel will be allowed to communicate with any lock or signal station while in transit through the Canal, except through the pilot; all messages of any kind must be sent through him. This does not apply to vessels moored at the terminals at Cristobal or Balboa, before entering or after having passed through the Canal, which may wish to communicate through the terminal stations.
- 51. Vessels in transit through the Canal can communicate with the locks and signal stations, through the pilots, both by the international code and special signals; information on this subject may be obtained from the Governor of the Panama Canal.

Accidents or Defects

52. If any defect in any part of a vessel's hull, machinery, steering gear or equipment, be discovered while in transit through the Canal, of

¹ See Executive Order amending this paragraph, p. 57 of this Supplement.

such a serious nature that it might interfere with the further passage of the vessel, or be liable to block the Canal, the vessel shall stop and, if practicable, be anchored or moored at the first available place. A full report shall immediately be made to the Superintendent of Transportation, through the Captain of the Port, stating fully the cause and nature of the trouble, probable delay, and request for assistance if it be necessary.

53. Under any and all circumstances, whenever a vessel is liable to become unmanageable from any weakness, or damage to her machinery, steering gear, or for any other reason, she shall immediately, through the pilot, request the assistance of a tug.

Firearms

54. No firearms of any kind shall be discharged while in transit through the Canal or in Canal waters, and every precaution will be taken to prevent this.

Subsistence of Pilots

55. Pilots and other authorized persons on duty, belonging to the Canal service, shall be subsisted without charge while on board vessels in transit through the Canal.

Maintenance of Tugs and Other Floating Equipment

56. No vessel, company, nor individual will be authorized to maintain or operate permanently any tugs, launches, lighters, or floating equipment of any kind within the Canal waters without permission from the Governor; nor shall any small craft or boat of any kind be operated without the proper authority from him.

Claims

57. All claims for damages arising from injury to vessels, cargo, or passengers from the passing of vessels through the locks under the control of those operating them in accordance with the rules and regulations governing the operation of the Panama Canal, shall be adjusted by mutual agreement when practicable, between the Panama Canal and the passengers, owners, agents or underwriters of the vessel, or owners, agents or underwriters of the cargo of the vessel, as the respective interests may appear.

- 58. To facilitate the adjustment of such claims the Board of Local Inspectors, together with an officer or employee detailed from the Accounting Department to assist the Board, shall immediately proceed to investigate and report upon all accidents to vessels in the locks, which may result in claims for damages against the Panama Canal under the provisions of Section 5 of the Panama Canal Act.
- 59. The Board of Local Inspectors or any member thereof, acting for the Board, shall have authority to summon witnesses and administer oaths to such witnesses at any hearing held by such Board, and the attendance of witnesses may be compelled by process of court on application of the Board to the District Judge.
- 60. The findings of the Board shall be expressed in writing and reported to the Governor and a certified copy thereof immediately sent to the Auditor. If the finding of the Board is against the Panama Canal, the Auditor may proceed at once to effect a settlement with the claimants, if practicable, but such settlement shall be subject to the approval of the Governor. When the settlement is effected immediate payment of the claim shall be made, if there is an appropriation available for such purpose. In case of disagreement suit may be brought by the claimant in the District Court of the Canal Zone, against the Governor of the Panama Canal, in conformity with Section 5 of the Panama Canal Act.
- 61. The Governor of the Panama Canal is authorized to issue such detailed rules, not inconsistent with this order, governing the duties of the Board and the adjustment of claims.

Measurement of Vessels

62. The rules for the measurement of vessels, to determine their tonnage, will be found in the proclamation of the President dated November 21, 1913.²

Aids to Navigation

- 63. In general, the channels of the Canal, except Culebra Cut, are marked by double ranges, which are set a little to the starboard side of the channel, so that no matter in which direction a vessel may be going, there will be a range available ahead.
- 64. The sides of the channels are marked by red and black buoys, in accordance with the system in vogue in the United States, with the red buoys on the starboard hand on entering from seaward, and the black
 - ² Printed in Supplement to this Journal for January, 1914, p. 56.

buoys on the port. The lock at Pedro Miguel is the dividing line between the Atlantic and Pacific systems; that is to say, that after passing through the locks, red and black buoys will be found on the opposite sides of the channels to those on which they were before reaching the locks.

65. All lighted ranges show flashing or intermittent white lights; the red lighted buoys show flashing or intermittent red lights; the black lighted buoys show flashing or intermittent white lights; beacons show red or white flashing or intermittent lights, depending upon the side of the channel upon which they are situated. Further information in regard to the navigation of the Canal can be obtained upon application to the Superintendent of Transportation or the Captains of the Ports.

Rules of the Road, Whistle and other Signals, and Speed Regulations relating to the Navigation of the Canal and Approaches thereto

- 66. In the following rules every steam vessel which is under sail and not under steam, is considered a sailing vessel; and every vessel under her own motive power, whether under sail or not, is to be considered a steam vessel.
- 67. The words "steam vessel" and "steamer" shall include every vessel propelled by machinery.
- 68. A vessel is under way, within the meaning of these rules, when she is not at anchor, moored, or aground.
- 69. Risk of collision can, when circumstances permit, be determined by carefully watching the bearings of an approaching vessel by compass, or otherwise; if the courses be converging and the bearing does not appreciably change, such risk should be deemed to exist.
- 70. A steam vessel shall be provided with an efficient whistle or siren, sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and a sailing vessel with an efficient fog horn; both shall be supplied with an efficient bell.
- 71. A sailing vessel of twenty tons gross tonnage or upward shall be provided with a similar fog horn and bell.
- 72. Motor boats shall be divided into classes as follows, according to the length, which shall be measured from end to end:

Class I Less than 26 feet.

Class II 26 feet or over, but less than 40 feet.

Class III 40 feet or over, but less than 65 feet.

- 73. All motor boats shall be provided with a whistle or other mechanical sound-producing device, capable of making a blast of at least two seconds' duration, and in addition, classes II and III shall be provided with an efficient fog horn and fog bell, the latter to be at least eight inches across the mouth.
- 74. A short blast of the whistle shall mean a blast of about one second's duration, and a prolonged blast of the whistle shall mean a blast of from four to six seconds' duration.
- 75. One short blast of the whistle signifies intention of or assent to steamer first giving the signal to direct course to her own starboard, except when two steamers are approaching each other at right angles or obliquely, when it signifies intention of steamer which is to starboard of the other to hold course and speed.
- 76. Two short blasts of the whistle signify intention of or assent to steamer first giving the signal to direct course to her own port, except when steamers are approaching each other at right angles or obliquely, when the signal signifies desire of or assent to steamer which is to the port of the other to cross the bow of the steamer to starboard.
- 77. Three short blasts of the whistle shall mean: "My engines are going at full speed astern."
- 78. When vessels are in sight of one another a steam vessel under way whose engines are going at full speed astern shall indicate that fact by three short blasts of the whistle.
- 79. If, when vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by making the danger signal, namely: several short and rapid blasts, not less than four, on the steam whistle.
- 80. Whenever the danger signal is given, the engines of both steamers shall be stopped and backed until the headway of the steamers has been fully checked; nor shall the engines of either steamer be again started ahead until the steamers can safely pass each other, and the proper signals for passing have been given, answered, and understood.
- 81. Steam vessels are forbidden to use what has become technically known among pilots as "cross signals," that is, answering one whistle with two, and answering two whistles with one. In all cases, and under all circumstances, a pilot receiving either of the whistle signals provided in these rules, which for any reason he deems injudicious to comply with,

instead of answering it with a cross signal, shall at once sound the danger signal and observe the rule applying thereto.

- 82. The signals for passing, by blowing the whistle, shall be given and answered by vessels, in compliance with these rules, not only when meeting head on, or nearly so, but at all times when the vessels are in sight of each other, when passing or meeting at a distance within a half mile of each other, and whether passing to starboard or port.
- 83. The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking, are never to be used except when steamers are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or at night by seeing its signal lights, except in cases hereafter mentioned, where vessels are approaching a turn in the Canal. In fog, mist, or heavy rainstorms, when vessels cannot see each other, fog signals only must be given.
- 84. When steam vessels are approaching each other head on, or nearly so, it shall be the duty of each to pass on the port side of the other; and either vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, and thereupon they shall pass upon the port side of each other. But if their courses be so far to starboard of each other as not to be considered as meeting head on, either vessel shall immediately give two short, distinct blasts of her whistle, which the other vessel shall answer promptly with two similar blasts, and they shall pass to starboard of each other; but vessels going in opposite directions, in transit through the Canal, shall make it an invariable rule to pass to port of each other, unless there be some special reason to the contrary.
- 85. When they sight each other in the straight reaches of the Canal, going in opposite directions, they shall, when within a mile of each other, be slowed down and each placed upon its respective range, which is marked by the two light towers to the starboard side of the middle line, and should not be allowed to approach closer than this to the center line until they have passed each other; this will obviate any risk of collision and prevent a vessel from approaching too close to the sides of the Canal.
- 86. Self-propelling Canal craft, at work on their stations or under way, will give way and leave the center of the channels clear to seagoing vessels in transit; nothing in this rule shall be construed to warrant a violation of the rules of the road, but shall be interpreted to mean that tugs, launches, and small self-propelling craft shall keep close to the sides of the Canal and out of mid channel when large vessels are passing, whenever practicable, without involving any danger to themselves.

- 87. The foregoing applies only to cases where vessels are meeting end on, or nearly so, in such manner as to involve risk of collision; in other words, to cases in which, by day, each vessel can see the masts of the other in a line, or nearly so, with her own, and at night to cases in which each vessel can see the other's side lights, and each can see the range lights of the other in line, or nearly so. It does not apply to cases in which a vessel can see another ahead crossing her own course, or by night to cases where the red light of one vessel is opposed to the red light of the other, or where a red light without a green light or a green light of the other, or where a red light without a green light or a green light without a red light is seen ahead, or where both green and red lights are seen anywhere but ahead.
- 88. Vessels approaching the sharper bends in the Canal, particularly when the next reach may be obscured, and all bends in Culebra Cut, shall, when at a distance of at least half a mile from such bend, slow down and blow one prolonged blast as a notification to other vessels which may be coming from the opposite direction; if there be no reply, the vessel may proceed, but vessels shall not pass each other in the bends of the Canal; if there be a reply to the blast first sounded, both vessels shall stop and proceed cautiously, following the rules of the road, but the vessel which has the turn of the bend on her port bow shall have the right to first proceed and make the turn.
- 89. When steam vessels are moved from their docks, or berths, and other vessels are liable to pass from any direction toward them, they shall sound a prolonged blast, but immediately after clearing their berths so as to be fully in sight, they shall be governed by the steering and sailing rules.
- 90. A prolonged blast shall also be sounded when approaching all signal stations or locks, and when leaving the latter.
- 91. When steam vessels are running in the same direction, and the vessel astern desires to pass on the starboard hand of the vessel ahead, she shall give one short blast, and if the vessel ahead answers with one blast, they shall maneuver accordingly, but if the vessel ahead does not think it safe for the vessel astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the whistle, not less than four, and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when the vessel ahead shall signify her willingness by blowing the proper signals; the vessel

ahead shall in no case attempt to cross the bow or crowd upon the course of the passing vessel.

- 92. Every vessel coming up with another vessel from any direction more than two points abaft her beam, that is, in such a position with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel, and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally passed and clear. As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.
- 93. After whistle signals have been made and answered, Canal craft must haul close out to the sides of the Canal and leave the center of the channels unrestricted for seagoing vessels; this applies particularly to the 500-foot channels and the Culebra Cut.
- 94. Unless specially authorized by the Governor, no owner, master, or operator of floating craft, except such as may belong to or be chartered by the Panama Canal, or such as may be engaged in passage of the Canal under charge of a government pilot, shall cause or permit such craft to enter, navigate or be present within that portion of the Panama Canal known as the Culebra Cut which lies between Gamboa and the Pedro Miguel lock.
- 95. For the better enforcement of this regulation, the officers and agents of the Canal, and the assistant engineers, superintendents, and supervisors employed under them by the authority of the Governor, shall have power and authority to arrest and take into custody, with or without process, any person or persons who may violate this rule.
- 96. Speed exceeding six knots per hour is prohibited in the Cut; large vessels, particularly when approaching a turn, shall go at the slowest speed that will enable them to keep their steerage way. This rule does not apply to vessels owned by the Canal.
- 97. The movement of vessels in the Culebra Cut will be regulated by orders to be issued by the Governor, which orders will be communicated to the masters of vessels by the pilots.
 - 98. The Canal authorities may require any vessel to take a tug through

the Cut, on approaching the locks, or in any other part of the Canal, when in their opinion it may be necessary to insure the safety of the vessel or to prevent accident or grounding.

- 99. Should a vessel be unwieldy, steer badly, or be hard to handle, the captain or master should so report and request the services of a tug to assist him through the Cut, should he deem it necessary.
- 100. On approaching another vessel under way in the narrow reaches, or before passing a vessel that has been tied up, or lighters, scows, dredgers, piledrivers, or anything that is afloat, whether moored, anchored or under way, vessels shall blow a prolonged blast and slow down in plenty of time to pass at the slowest speed at which they can be steered.
- 101. The following speeds shall not be exceeded by vessels in transit through the Canal:

Colon to Gatun locks	6	knots	per	hour
Gatun Lake, in the 1000-foot channels	15	"	"	"
Gatun Lake, in the 800-foot channels	12	"	"	"
Gatun Lake, in the 500-foot channels	10	u	"	u
Culebra Cut	6	ш	"	"
Miraflores Lake	6	"	"	"
Miraflores locks to Pacific entrance to Canal	6	"	"	"
Steamers entering or leaving a port	6	"	"	"

- 102. The Governor may change the rules in regard to speed and the use of tugs at any time that he may see fit, but will give due notice in case any changes be made.
- 103. Under no condition will steamers be allowed to run side by side in any part of the Canal proper, terminal port, or adjacent waters, both going in the same direction, except for the time necessary for one steamer to pass ahead of another, after the proper signals have been made and answered; nor shall such passing take place in any of the bends of the Canal; should an occasion arise, however, where steamers may find themselves running side by side, or nearly so, in the same direction, in the open waters or elsewhere, the steamer on the right or starboard side shall have the right of way, and the steamer on the left or port side shall check her way, drop astern, and keep at a safe distance until the bend shall have been passed or there is no further danger of collision.
- 104. When two steamers are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steamer is

overtaking another, the steamer which has the other on her port side shall hold her course and speed; and the steamer which has the other on her starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steamer, or, if necessary to do so, slacken her speed, or stop, or reverse. The steamer having the other on her own port bow shall blow one blast of her whistle as a signal of her intention to cross the bow of the other, holding her course and speed, which signal shall be promptly answered by the other steamer by one short blast of her whistle as a signal of her intention to direct her course to starboard so as to cross the stern of the other steamer or otherwise keep clear.

- 105. If, from any cause whatever, the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall at once be made apparent by blowing the danger signal, and both steamers shall be stopped and backed, if necessary, until signals for passing with safety are made and understood.
- 106. Every vessel which is directed by these rules to keep out of the way of another vessel, shall, if the circumstances of the case permit, avoid crossing ahead of the other.
- 107. Every vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed, or stop, or reverse.
- 108. When a steam vessel and a sailing vessel are proceeding in such directions that they may involve the risk of collision, the steam vessel shall keep out of the way of the sailing vessel.
- 109. When two sailing vessels are approaching one another so as to involve risk of collision, one of them shall keep out of the way of the other, as follows:
- (a) A vessel which is running free shall keep out of the way of a vessel which is close-hauled.
- (b) A vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack.
- (c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.
- (d) When both are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to the leeward.

- (e) A vessel which has the wind aft shall keep out of the way of the other vessel.
- 110. Where, by any of these rules, one of two vessels is to keep out of the way, the other shall keep her course and speed.
- 111. Notwithstanding anything contained in these rules, every vessel overtaking another shall keep out of the way of the overtaken vessel.
- 112. Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This rule shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats.
- 113. Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from all the consequences of any neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.
- 114. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.
- 115. In fog, mist, or heavy rainstorms, whether by day or night, signals shall be given as follows:
- (a) A steam vessel under way, except when towing other vessels or being towed, shall sound, at intervals of not more than one minute, on the whistle or siren, a prolonged blast.
- (b) A vessel when towing other vessels shall sound, at intervals of not more than one minute, on the whistle or siren, three blasts in succession, namely: one prolonged blast followed by two short blasts.
- (c) Seagoing dredges, when dredging in a fog, shall give four blasts in succession: one prolonged blast followed by three short blasts.
- (d) A vessel towed may give, at intervals of not more than one minute, on the fog horn, a signal of three blasts in succession, namely: one prolonged blast followed by two short blasts, and she shall not give any other.
- (e) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when the wind is abaft the beam three blasts in succession.
- (f) All rafts or other water craft, not herein provided for, navigated by hand power, horsepower, or by the current of the river, shall sound

a blast on the fog horn, or equivalent signal, at intervals of not more than one minute.

- (g) A vessel at anchor shall, at intervals of not more than one minute, ring the bell rapidly for about five seconds.
- 116. Every vessel shall, in fog, mist, or heavy rainstorm, go at a moderate speed, slow down, or stop, having due regard to the existing circumstances and conditions.
- 117. A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, as far as the circumstances of the case admit, stop her engines, and then navigate with caution until the danger is over.
- 118. In thick and foggy weather vessels will not be allowed to enter the Canal or leave the locks or mooring station, until the weather has cleared. Vessels in transit, when overtaken by thick or foggy weather, must immediately take every precaution and make preparation to anchor or moor at the first available place, and so remain until the weather clears. Vessels equipped with radio, when overtaken by thick or foggy weather, should immediately so report, in order that the proper fog signal may be made at the mooring stations on the approach of such vessels.
- 119. In order further to assure safe navigation in thick or foggy weather, masters of vessels shall have prepared accurate tables showing their compass error, before they will be allowed to enter the Canal. The general direction of the Canal and its reaches is southeasterly and north-westerly, and it would be well, if an opportunity offers, for vessels to obtain an accurate deviation table on these courses, while in the approximate latitude and vicinity of the Canal.
- 120. Upon the first approach of thick weather of any kind, the position of the ship must be accurately checked and the closest possible reckoning be kept until the weather clears, or she shall have been moored or anchored.
- 121. Unnecessary sounding of the steam whistle, except as a danger signal or in case of fire or emergency, is prohibited within the waters of the Canal Zone; and any licensed officer in charge of a steamer who authorizes or permits such unnecessary whistling shall, upon conviction thereof before the Board of Local Inspectors having jurisdiction, be suspended from acting under his license, if the inspectors trying the case so decide.
- 122. The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

- 123. The rules concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.
 - 124. A steam vessel when under way shall carry:
- (a) On or in front of the foremast, or, if a vessel without a foremast, then in the fore part of the vessel, a bright white light so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass, so fixed as to throw the light 10 points on each side of the vessel, namely: from right ahead to two points abaft the beam on either side, and of such a character as to be visible at a distance of at least five miles.
- (b) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least two miles.
- (c) On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible at a distance of at least two miles.
- (d) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.
- (e) A seagoing steam vessel shall carry an additional white light similar in construction to the light mentioned in subdivision "a." These two lights shall be so placed in line with the keel that one shall be at least 15 feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance of these lights shall be less than the horizontal distance.
- 125. A steam vessel when towing another vessel shall, in addition to her side lights, carry two white bright lights in a vertical line, one over the other, not less than three feet apart, and when towing more than one vessel, shall carry an additional bright white light three feet above or below such lights, if the length of the tow measuring from the stern of the towing vessel to the stern of the last vessel towed exceeds 600 feet. Each of the lights shall be of the same construction and character, and shall be carried in the same position as the white light "a," previously mentioned for steamers.

- 126. Such steam vessel may carry a small white light abaft the funnel, aftermast, or at the stern, for the vessel towed to steer by, but such light shall not be visible forward of the beam.
- 127. A sailing vessel under way or being towed shall carry the same lights "b" and "c" as are prescribed for a steam vessel under way, with the exception of the white lights mentioned, which they shall never carry.
- 128. Whenever, as in the case of vessels of less than 10 gross tons under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use, and shall, on the approach of or to other vessels be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than two points abaft the beam on their respective sides. To make the use of these portable lights more certain and easy, the lanterns containing them should each be painted outside with the color of the light which they respectively contain, and shall be provided with proper screens.
- 129. Pilot vessels when engaged on their station on pilotage duty shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all around the horizon; and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed 15 minutes.
- 130. A steam pilot vessel when engaged on pilotage duty and not at anchor shall, in addition to the lights required for all pilot vessels, carry at a distance of eight feet below her white masthead light, a red light visible all around the horizon and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and also the colored side lights required to be carried by vessels when under way.
- 131. When engaged on her station on pilotage duty and at anchor she shall carry, in addition to the lights required for all pilot boats, the red light above mentioned, but not the colored side lights.
- 132. Fishing vessels less than 10 gross tons, when under way, and not having their nets, dredges, or lines in the water, shall carry the usual white light eight feet above the deck and shall have ready at hand a lantern with a green glass on one side and a red glass on the other side, and on approaching or being approached by another vessel, such lantern

shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

133. All fishing vessels and fishing boats of 10 gross tons or upward, when under way and not having their nets, trawls, dredges or lines in the water, shall carry and show the same lights as other vessels under way.

134. All vessels, when trawling, dredging, or fishing with any kind of dragnets or lines, shall exhibit, from some part of the vessel where they can be best seen, two lights. One of these lights shall be red and the other shall be white. The red light shall be above the white light, and shall be at a vertical distance from it of not less than 6 feet and not more than 12 feet; and the horizontal distance between them, if any, shall not be more than 10 feet. These two lights shall be of such a character and contained in lanterns of such construction as to be visible all around the horizon, the white light at a distance not less than three miles and the red light not less than two miles.

135. A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

136. A vessel under 150 feet in length when at anchor shall carry forward, where it can best be seen, but at a height not exceeding 20 feet above the hull, a white light, in a lantern constructed so as to show a clear, uniform and unbroken light visible all around the horizon at a distance of at least one mile.

137. A vessel of 150 feet or upward in length when at anchor shall carry in the forward part of the vessel, at a height of not less than 20 feet and not exceeding 40 feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall not be less than 15 feet lower than the forward light, another such light.

138. The length of the vessel shall be deemed to be the length appearing in her certificate of registry.

139. Every vessel may, if necessary in order to attract attention, in addition to the lights which she is by these rules required to carry, use a flare-up light or use any detonating signal that cannot be mistaken for a distress signal.

140. Every barge, lighter, canal boat, or scow, that is moored alongside of any ship or another barge, or to the side of the Canal, or to any wharf, or lying at anchor on the navigable waters of the Canal Zone, shall show, between the hours of sunset and sunrise, a white light on the bow and stern, at least three feet above the deck of said vessel, and not less than eight feet from the bow and stern thereof.

- 141. Nothing in these rules shall interfere with the operation of any special rules made by the government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition of recognition signals adopted by shipowners, which have been authorized by their respective governments, and duly registered and published, unless specific instructions are given by the Canal authorities to discontinue the use of such lights while in transit through the Canal.
- 142. A steam vessel proceeding under sail only, but having her funnel up, may carry in daytime, forward, where it can best be seen, one black ball or shape two feet in diameter.
- 143. Seagoing suction dredges, when under way and dredging, shall carry, beside the lights prescribed for steamers under way, between the two masts where they can best be seen, two red lights approximately the same height as the masthead light of a steamer, in a vertical line one over the other, not less than six feet apart, and of such a character as to be visible all around the horizon at a distance of at least two miles; and they shall, by day, carry between the two masts where they can best be seen, in a vertical line one over the other not less than six feet apart, two black balls or shapes, each two feet in diameter.
- 144. Seagoing suction dredges, when dredging is stopped and the dredge is proceeding either to or from her dumping ground, either loaded or light, shall, at night, extinguish the two red lights and, by day, lower the black balls.
- 145. Seagoing suction dredges, while actually engaged in dredging, as shown by the black balls or red lights, above, shall have the right of way over all other vessels, but in the narrower reaches and the Culebra Cut shall give way to seagoing ships; but when not dredging, as shown by the absence of the black balls or red lights, shall observe all the rules, and have no special privilege.
- 146. Ferryboats, propelled by machinery and navigating the waters of the Canal Zone, shall carry the range lights and the side lights required by law to be carried on steam vessels.
- 147. Barges, canal boats, scows, and lighters being towed astern of steam vessels, when towing singly or what is known as tandem towing, shall each carry a white light on the bow and a white light on the stern.
 - 148. When towed with a hawser two or more abreast, when in one

tier, they shall carry a white light on the bow and a white light on the stern of each of the outside boats; when in more than one tier, each of the outside boats shall carry a white light on its bow; and the outside boats in the last tier shall each carry, in addition, a white light on the outer after part of the stern.

- 149. Barges, etc., towed alongside a steam vessel, if on the starboard side of said steam vessel, shall display a white light on her own starboard bow, and if on the port side of said steam vessel, shall display a white light on her own port bow; and if there be more than one barge or canal boat alongside, the white light shall be displayed from the outboard side of the outside barge or canal boat.
- 150. When barges, etc., are in tiers and towed at a hawser, there shall be carried on the forward port side of each tier a white light, and on the forward starboard side of the starboard boat in each tier a white light, and on the after port side of the port boat in the stern tier a white light, and on the after starboard side of the starboard tier a white light.
- 151. Rafts propelled by hand power, or by the current of the river or tide, or which shall be anchored in or near the channel or fairway, or proceeding in tow of a steam vessel, shall carry one white light on each outside corner of the raft, making four lights in all.
- 152. Row boats and cayucos, whether under oars or sail, shall carry a white light, visible all around the horizon, at an elevation above the surface of the water of at least three feet.
- 153. The white light required by these rules for rafts and other water craft shall be carried from sunset to sunrise, in a lantern so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and of such intensity as to be visible on a dark night with a clear atmosphere at a distance of at least one mile. The lights for rafts shall be suspended so that the lights shall not be less than eight feet above the surface of the water.
- 154. Any piece of plant, whether dredge, rock-breaker, or drill barge, that is operated by means of fore, aft, and side chains, shall carry, when said fore, aft and side chains are taut, a black ball on each side of the dredge, in some conspicuous place at least eight feet above the deck, and near the position of the side chains; at night these balls shall be replaced by a red light which shall show all around the horizon and be plainly visible at a distance of one mile.
- 155. When a steamer wishes to pass the dredge, drill boat, or rock-breaker, at a point where it might foul its side chains, it should ask per-

mission to pass, by using the signal for port or starboard, as provided in the foregoing rules, and the dredge, drill boat, or rock-breaker shall immediately lower its chain on the side asked for by the steamer, indicating its fulfillment of this by, in the daytime, lowering the ball; in the night, putting out the red light.

156. If the dredge, drill boat or rock-breaker is unable to lower its side chain, or should consider it dangerous for the steamer to pass on the side asked for, the dredge, drill boat or rock-breaker will blow the danger signal, when the steamer will stop until the ball or light signal given above shall be shown.

157. Any master or pilot of any steam vessel who shall flash or cause to be flashed the rays of the searchlight into the pilot house of a passing vessel shall be deemed guilty of misconduct and shall be liable to have his license suspended or revoked; in general, searchlights shall not be used for navigation purposes in transit through the Canal, since the aids to navigation are sufficiently abundant to obviate any danger or necessity for using them.

158. When a vessel is in distress and requires assistance from other vessels, or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, namely:

First: Flames on a vessel, as from a burning tar barrel, oil-barrel, etc. Second: A continuous sounding with any fog-signal apparatus, or firing a gun.

Third: Rockets or shells showing stars, fired one at a time, at short intervals.

- 159. In connection with these, vessels may use the international code and special signals with shapes, hereafter described.
- 160. When lighters, barges, scows, or canal boats are tied or moored along any wharf, or along the shore in the channel in the navigable waters of the Canal Zone, including the Canal and approaches thereto, it shall be unlawful to moor them more than two deep, thereby obstructing the channel.
- 161. Except in the terminal harbors or the authorized anchorages, vessels shall not moor alongside one another in any part of the Panama Canal. In the terminal harbors and authorized anchorages more than two vessels shall not be moored alongside each other, except that additional power hoists may be moored alongside two vessels so connected, while actually engaged in transshipping cargo.
 - 162. Nothing in this rule shall be constructed as affecting the right of

the Panama Canal to moor barges used by Canal construction and maintenance in any manner that may be deemed proper.

- 163. Every piece of plant, except seagoing suction dredges, whether dredge, rock-breaker, or drill barge, that is engaged in excavating or preparing to excavate the Canal, whose position is stationary, or moving from time to time over the face of the shoal that it is working on or removing, shall have the prior right to such position, and it shall be unlawful for any person or persons, navigating a ship or otherwise, to foul above-named plant or its moorings in any way whatever.
- 164. All barges moved from berth to berth along wharves or banks of the Canal shall be moved by being handled by proper towboat for same, and it shall be unlawful to move barges by hand power in the navigable fairways of the Canal, unless to preserve life or property in peril.

General Regulations

- 165. While in a terminal port or in transit through the Canal no vessel will be allowed to throw overboard any ashes, cinders, ballast, solid matter of any kind, boxes, paper, or anything that will float, heavy slops, or anything that will tend to deface or make the waters of the Canal unsanitary. This does not apply to water-closet chutes, nor to the water used in cooking or in cleaning table-ware, but does prohibit the throwing overboard of bones, pieces of meat, vegetable and fruit parings, or any heavy slops that can be carried until the open water of the sea can be reached.
- 166. No vessel shall make fast or run any lines to any marking buoy, beacon, or aid to navigation; this does not prohibit the use of mooring buoys for the purpose for which they were intended; vessels must use every precaution to guard against injury to any of the aids to navigation in Canal waters; should any damage or injury be inflicted, it shall be immediately reported to the Captain of the Port.
- 167. Any vessel arriving at the ports with gunpowder or other explosives on board will not be admitted to the wharves or allowed to land the same until a report is made to the proper authority and an arrangement entered into for the immediate disposal of the explosives.
- 168. Vessels are not allowed to anchor in the channel of the Canal or its approaches, unless in case of distress, when assistance should at once be requested.
 - 169. If for any reason not an emergency, a vessel must anchor, she

must do so in such a location that it will not interfere with the navigation of the channels.

- 170. All vessels upon entering port will be assigned to anchorage or wharves by the Captain of the Port.
 - 171. Vessels must not anchor on the range line of any range lights.
- 172. Vessels will be held liable for all damage done to the Canal or any part of its plant or equipment, of any character or description whatsoever, whether the damage be done to the floating equipment, wharves, locks, or banks of the Canal; and in the case of the sinking of any floating or other equipment belonging to private persons or corporations in the channel of the Canal, or its approaches, side channels, or along its wharves, that create or tend to create an obstruction in the Canal or its approaches, side channels, or along its wharves, the person or company owning the sunken equipment may be given thirty days to remove the same. Should he or they fail to do so, the Canal authorities may remove the obstruction and the person or corporation owning the same shall pay all the expense of the removal of the obstruction, to be collected by a civil suit in the Zone courts and a levy and sale of any property of the persons or corporations found in the Canal Zone or its harbors.
- 173. The Canal authorities may order the removal of the obstruction at once, or remove it without waiting for action by the owners, and the cost of such removal shall be taxed and collected as mentioned above.
- 174. Should a vessel go aground, collide, be in imminent danger, or meet with any serious accident while in Canal waters, the Canal authorities shall have the right to supervise and direct all operations in relation thereto, that may be necessary to float her or clear the wreckage; but the master and all others under him, as well as every appliance on board the ship which may be of use, shall be placed at the disposal of the Canal authorities without additional charge or claim against the Canal.
- 175. Vessels wishing to unload or load ballast will be assigned anchorage by the Captain of the Port, and must have a proper chute, so arranged as to prevent ballast from falling overboard.
- 176. No warp or line shall be passed across any channel or dock so as to obstruct the passage of vessels or cause any interference with the discharging of cargoes.
- 177. If any damages shall be caused by vessels or their mooring cables to the works of any harbor, the parties responsible for same shall pay the costs for necessary repairs, and the same may be recovered in the courts of the Canal Zone.

178. If a vessel occupying a berth at a wharf or pier, with or without the consent of the Captain of the Port, fails to vacate such berth when ordered by him, or when not loading or unloading, fails to make way for another vessel that wishes to load or unload, the Captain of the Port shall then cause such vessel to be moved to some other berth, or be anchored in the stream, and the expense of such removal shall be paid by the master, agents, or owners of such vessel, and in case of their neglect or refusal to pay such expense upon demand, it may be recovered in an action before any court having jurisdiction.

179. No vessel shall be entitled to a berth until application has been made by the master, owner, or consignee of the vessel, to the Captain of the Port, and such application must state the length, draft, and kind of cargo. No one but the Captain of the Port has authority to assign berths to vessels. No vessel, whether at anchor or lying at a wharf, shall shift its berth, without permission from the Captain of the Port.

180. All goods, merchandise, and material of every kind, landed or placed on any pier, bulkhead, or other wharf property, or upon reclaimed land, must be removed therefrom within 36 hours, provided, that the Captain of the Port for good cause may extend the time. All goods, merchandise and materials of every kind encumbering any pier, bulkhead, or other wharf structure or reclaimed land, after the time designated for the removal thereof shall have expired, will be liable to be removed by the Captain of the Port to any warehouse or yard, at the sole risk and expense of the owner of such goods, merchandise, or materials, and all expense incurred for such removal and storage, or otherwise, shall be and become a lien thereon, and such goods, merchandise, and materials will not be delivered to the owner until the expense of such removal and storage has been paid.

181. It shall not be lawful for the owners, lessees, or occupants of any pier, wharf, or bulkhead, which has been covered with a shed, to use such shedded pier, wharf, or bulkhead for the permanent storage of goods, merchandise, cargo, or material of any kind which may be discharged or placed thereon.

182. Piers, wharves, and bulkheads thus shedded are designated for the protection of merchandise and cargo in transit, and such merchandise and cargo must be removed therefrom within 36 hours; provided, that the Captain of the Port may for good cause extend the time.

183. No accumulation of material upon the piers, wharves, bulkheads

and reclaimed land will be allowed, and whenever any pier, wharf, bulk-head or reclaimed land shall be encumbered or obstructed in its free use by any vessel, merchandise or material, or by any structure, encumbrance, or obstruction not authorized or permitted, the Captain of the Port may require the owner, agent, consignee, or person occupying or in charge of such merchandise or obstruction, to remove the same without delay. Upon receiving said order the owner, agent, consignee, or person in charge of the vessel, merchandise, material, structure, encumbrance, or obstruction, in reference to which said order or direction was given shall comply with the same without delay and upon his refusal or failure to do so, shall be punished by a fine or imprisonment as hereinbefore provided.

- 184. No fishing nets will be allowed in any place in the Canal, along its wharves, or in its channels, whenever in the opinion of the Superintendent of Transportation such nets interfere or might interfere with navigation, and it shall be the duty of the owner thereof, upon notification, to remove them immediately.
- 185. Anyone finding any buoy out of position, or lights not working properly, should immediately report the same to the Captain of the Port.
- 186. Steamers while within a harbor must take all precautions to avoid the issue of sparks, any vessels will be held liable for all damage resulting from neglect of this rule.
- 187. No pitch, tar, turpentine, or other combustible, shall be boiled on any wharf, or on board any vessel without permission from the Captain of the Port.
- 188. In case of fire on board a vessel, all masters of other vessels shall render such assistance as may be in their power.
- 189. A vessel anchored or moored in the harbor or lying at a dock must at all times, night or day, have on board a sufficient number of men to take care of the vessel.
- 190. No vessel shall unload lumber, timber, or piles in the waters of a harbor without permission of the Captain of the Port, who shall designate where such lumber shall be rafted, so as to avoid obstructing or hindering the movements of vessels.
- 191. Lighters, barges, scows, and other vessels belonging to persons or corporations of any and all descriptions shall be anchored in such places as the Captain of the Port may direct, and shall be at all times under his supervision and direction.

- 192. The Captain of the Port shall keep in his office records of all his proceedings with statements of the result of all examinations and inquiries made by him, which records may be inspected by interested parties.
- 193. All notifications and requests to the Captain of the Port shall be made at his office, in writing, and shall be duly entered and filed by him.
- 194. It shall be unlawful for any person, without first having secured a pilot's license from the Government of the Canal Zone, to navigate any steam vessel with a net tonnage of more than 15 tons burden in Canal Zone waters.
- 195. All privately owned boats of every description must be registered and numbered, and the number must be obtained before they will be allowed to operate in any part of the Canal waters.
- 196. When numbers have been assigned, they shall be displayed in a conspicuous place, in the prescribed form.
- 197. All vessels moored to wharves, whether loading or unloading cargo or in the ordinary way of business, shall be moored to the wharves with rope hawsers only, and it shall be unlawful for any chain or wire hawsers to be used on any public wharf in the Canal Zone without the specific permission of the Captain of the Port.
- 198. All vessels, whether commercial or otherwise, moored to wharves in the Canal Zone, shall be compelled to keep watch at night and to have suitable fire-fighting apparatus on hand.
- 199. Whenever it shall become necessary to remove any especially inflammable cargo from commercial ships, or ships at public wharves of the Canal Zone, such as oils, gasoline, naphtha, petroleum, etc., it shall be necessary for notice to be given to the Captain of the Port at least two hours before such cargo shall be discharged upon the wharf, so that proper means can be provided to dispose of this class of material at the earliest possible moment.
- 200. It shall be unlawful for any person or persons, whether navigating a vessel or otherwise, to take possession of or use for any purpose, to make fast to or build upon, to alter, deface, destroy, move or injure any part of the plant or equipment, whether floating or otherwise, belonging to the Canal.
- 201. These rules shall apply to and govern the navigation and use of the waters of the Panama Canal, as the Canal is now or may hereafter be constituted, as well as all Canal channels, lakes, harbors, and other auxiliary waters, as may now or hereafter be deemed necessary for Canal

purposes, or which may now or hereafter be under the jurisdiction of the Canal Zone Government.

WOODROW WILSON.

THE WHITE HOUSE, 9 July, 1914.

EXECUTIVE ORDER AMENDING PARAGRAPH 49 OF THE "RULES AND REGULATIONS FOR THE OPERATION AND NAVIGATION OF THE PANAMA CANAL AND APPROACHES THERETO, INCLUDING ALL WATERS UNDER ITS JURISDICTION"

No. 2073

By virtue of the authority vested in me under the Panama Canal Act, Paragraph 49 of the "Rules and Regulations for the Operation and Navigation of the Panama Canal and Approaches Thereto, Including All Waters Under Its Jurisdiction," promulgated by Executive Order No. 1990, dated July 9, 1914, is hereby amended to read as follows:

49. No radio tolls, either coast station or forwarding, will be imposed against ships on radiograms transmitted by ships on Canal business. There will be no charge made against the Panama Canal, by Canal Zone land lines or radio stations, for the transmission of radiograms to ships on Canal business.

WOODROW WILSON.

THE WHITE HOUSE, 4 November, 1914.

BOUNDARY CONVENTION BETWEEN THE UNITED STATES AND PANAMA 1

Signed at Panama, September 2, 1914; ratifications exchanged February 11, 1915

Whereas, Gen. George W. Davis, then Governor of the Canal Zone, on behalf of the United States of America, and Messrs. Tomás Arias and Ramón Valdés López, then Secretary of Foreign Affairs and Attorney General, respectively, of the Republic of Panama, acting on behalf of that Republic, entered into an agreement on the 15th day of June, 1904,

¹ U. S. Treaty Series, No. 610.

by the terms of which the Republic of Panama delivered over to the United States of America, the use, occupation, and control in perpetuity of the zone of land ten miles in width described and mentioned in Articles II and III of the Canal Treaty between the United States of America and the Republic of Panama, dated November 18, 1903, and the boundary lines of said zone, as well as those of the cities of Panama and Colon and their adjacent harbors, were subsequently located upon the ground and monumented:

And, whereas, the President of the Republic of Panama, by decree number 46 of May 17, 1912, delivered over to the United States the use, occupation, and control of the areas of land to be covered by the waters of Lake Gatun and all that part of the shores of the lake up to an elevation of one hundred feet above sea level, in conformity with Articles II and III of said Canal Treaty:

And whereas, since the promulgation of said decree of May 17, 1912, the United States, in conformity with the said articles of said treaty, have taken over the use, occupation, and control of the islands in said Lake Gatun and the peninsulas bordering on said lake to which there is no access except from said lake or from lands within the jurisdiction of the Canal Zone;

Now, therefore, the Government of the United States and the Republic of Panama being desirous to establish permanently the boundary lines of the above-mentioned lands and waters so taken over by the United States, to that end have resolved to enter into the following agreement, for which purpose the President of the United States of America has commissioned His Excellency William Jennings Price, Envoy Extraordinary and Minister Plenipotentiary of the United States to the Government of Panama, and the President of the Republic of Panama has commissioned His Excellency Ernesto T. Lefevre, Secretary of State in the office of Foreign Affairs of the Republic of Panama, who, having exchanged their respective full powers, have entered into the following boundary convention:

Ι

It is agreed that the boundary lines of the zone of land of ten miles in width described in Article II of the said Canal Treaty shall remain as defined and established by the agreement of June the 15th, 1904, above mentioned, and subsequently located on the ground and monumented as shown by exhibit "A" accompanying this convention, with the modifi-

forty-six one-hundredths (148.46) meters to an iron rail property monument; thence north eight degrees and fourteen minutes, and forty seconds west (N. 8° 14' 40" W.) one hundred and fifty-one and thirtythree one-hundredths meters (151.33) to a point; thence north thirtyseven degrees and forty-five minutes east (N. 37° 45' E.) fourteen and thirty-three one-hundredths meters to a point in the road on the present boundary line: thence along said present boundary north no degrees and forty-seven minutes west (N. 0° 47' W.) sixty-six and forty-four onehundredths meters (66.44) to a point; thence north seventy-six degrees and fifty-nine minutes east (N. 76° 59' E.) forty-two and forty-five onehundredths (42.45) meters to a point; thence south seventy-two degrees and eleven minutes east (S. 72° 11' E.) one hundred and fifty-nine and twenty-seven one-hundredths (159.27) meters to a point near Calidonia Bridge; thence north three degrees and eight minutes east (N. 3° 8′ E.) crossing the Panama Railroad Company's tracks, seventy-seven and three-tenths (77.3) meters to a point twelve and two-tenths (12.2) meters from the center line of the main track of the said Panama Railroad; thence parallel to the said railroad in a north-westerly direction, two hundred and ninety and five-tenths (290.5) meters to a point on the present boundary line; thence north forty-nine degrees, thirteen minutes and ten seconds west (N. 49° 13′ 10" W.) and one hundred and sixty-five and thirty-seven one-hundredths (165.37) meters to an iron rail monument, twelve and three-tenths (12.3) meters from the center of the main line track of the Panama Railroad; thence north forty-six degrees. thirty-nine minutes and thirty seconds west (N. 46° 39′ 30″ W.) two hundred and twenty and four one-hundredths (220.04) meters to a Panama Railroad Boundary monument twenty-two and one-tenth (22.1) meters from the center line of Panama Railroad main line track; thence north forty-nine degrees and fourteen minutes west (N. 49° 14' W.) and parallel with the Panama Railroad track two hundred and ninety and thirty-six one-hundredths (290.36) meters to Rio Curundu; thence following the course of Rio Curundu up-stream to a point (marked "E" on the map) where the said Rio Curundu is intersected by a straight line drawn through the point of intersection on the canal axis (marked "Cocoli" on the map) perpendicular to that part of the Canal axis of A. D. 1906 which extends in a straight line southeasterly from the said point marked "Cocoli" to the point of intersection (marked "Bay" on the map) the former point of intersection being situated between Miraflores and Corozal, and the latter point in Ancon Harbor; thence

from "E" north sixty-three degrees and thirty minutes east (N. 63° 30′ E.) two thousand and eight and six-tenths (2,008.6) meters to a concrete monument (marked "F" on the map) on the present boundary between the Canal Zone and the Republic of Panama; thence along this boundary south twenty-six degrees and thirty-four minutes east (S. 26° 34′ E.) about four thousand seven hundred and forty-four and five-tenths (4,744.5) meters to monument No. 99 and thence continuing on this line to the shore of Panama Bay at low water mark; thence following the mean low water line around the shore of Panama Bay to a point on the boundary line between Panama Harbor and Ancon Harbor; thence north seventy-two degrees, fourteen minutes west (N. 72° 14′ W.) to a monument "A," the point of beginning, except that the entire area of the middle island on the map called Las Tres Hermanas shall be under the jurisdiction of the United States of America.

Points "A," "B" and "C," above referred to, are the same points mentioned in the original agreement between the Government of the Republic of Panama and the Canal Zone Government, dated June 15, 1904.

All bearings in this description and on the map mentioned above are referred to true meridian and all coördinates are in accordance with the Panama-Colon Datum.

The Government of Panama agrees that the portion of the roadway now existing between the Ancon Post Office and the Tivoli Dispensary and connecting the Tivoli Road with the roads leading to Balboa and the Ancon Hospital grounds, which will fall within Panaman jurisdiction as a result of the boundary lines established in accordance with the foregoing description, will be kept open and of the same grade as same now is and will be maintained in good serviceable condition by the said Government of Panama so that it will afford a free, uninterrupted and unobstructed permanent public thoroughfare, unless in the future provided otherwise by the mutual agreement of the chief executive authorities of the Republic of Panama and the Panama Canal.

IV

It is agreed that the harbor of the City of Panama shall include the maritime waters in front of the City of Panama lying to the north and east of a line beginning at a concrete monument set on "Punta Mala" marked "A" on the map already referred to in this convention, and

running south seventy-two degrees and fourteen minutes east (S. 72° 14' E.) through the middle island of the three islands known as "Las Tres Hermanas," but excluding the said middle island, and extending three marine miles from mean low water mark at Punta Mala; and that the harbor of Ancon shall include the waters lying south and west of said line, but including the said middle island which shall be deemed to be within the harbor of Ancon. The said middle island hereby included within the harbor of Ancon is situated about south twelve degrees, thirty minutes west (S. 12° 30' W.) eight hundred and fifty-six (856) meters from the point of Las Bovedas and lies in latitude north eight degrees, fifty-six minutes (N. 8° 56') plus one thousand and fifty-eight and eighty-eight hundredths (1,058.88) meters and longitude west seventy-nine degrees, thirty-two minutes (W. 79° 32') plus three hundred forty-two and six-tenths (342.6) meters, the datum of said latitude and longitude being what is generally known as the Panama-Colon Datum. All bearings are referred to true meridian.

The foregoing description of the City of Panama and Panama Harbor conform to the accompanying blue print marked exhibit "B."

v

It is agreed that the permanent boundary line between the City of Colon and the Canal Zone shall be as follows:

Beginning at a point on the western shore of Boca Chica (sometimes called Folks River) marked "A" on the map, and fifty (50) meters to the eastward of the center line of the main line of track of the Panama Railroad; thence northward and north-westward, always parallel with said railroad track, and at a uniform distance of fifty (50) meters from the center line thereof to the center of Bolivar Street (sometimes called "C" street), said point being marked "B" on the map; thence northerly along the center line of said Bolivar Street, to the center line of Eleventh Street, this point of intersection being marked "C" on the map; thence westerly along the center line of Eleventh Street, a distance of one hundred sixty-two and fifty-three hundredths (162.53) meters to a cross on the sea wall along Limon Bay, said point being marked "D" on the map; thence north seventy-eight degrees, thirty minutes and thirty seconds west (N. 78° 30′ 30″ W.) to the shore of Limon Bay at mean low water mark; thence following the mean low water line around the shore in a northerly, easterly, southerly, and westerly direction to the point of

beginning, except that at the site of the old Colon lighthouse a detour is made, as shown on the map, to exclude an area of land to be used as the site for a United States battery, which site shall be deemed to be within the Canal Zone.

The site for a United States battery above mentioned, which is to be included within the jurisdiction of the Canal Zone, is described as follows:

The initial point is a tack in a stake on Colon point, situated with reference to certain prominent points as follows: South forty-one degrees, six minutes east (S. 41° 6′ E.) twenty-five and twenty-two onehundredths (25.22) feet from the southwest interior corner of the upper pavement of the swimming pool; south eleven degrees, thirty-seven minutes west (S. 11° 37′ W.) one hundred twenty-seven and sixty-eight one-hundredths (127.68) feet from a cross mark on a bolt set in a concrete base thirteen and nine-tenths (13.9) feet to the northeast of the center of the northeastern edge of the swimming pool; south thirty-five degrees, eighteen minutes west (S. 35° 18′ W.), two hundred sixty-six and seventy-five one-hundredths (266.75) feet from the northwestern corner of the Hotel Washington; and north sixty-eight degrees, twentynine minutes west (N. 68° 29′ W.), five hundred forty-three and ninetyfive one-hundredths (543.95) feet from the cross mark on a rail set in a concrete base at a point where the south building line of Second Street intersects the center line of Bottle Alley; from this initial point south forty-three degrees, no minutes west (S. 43° 00′ W.), two hundred fiftyeight and five-tenths (258.5) feet to a point; thence north forty-seven degrees, no minutes west (N. 47° 00' W.) ninety and sixty-four onehundredths (90.64) feet to a point; thence by a curve to the right with a radius of fifty-six and eighty-six one-hundredths (56.86) feet and a central angle of forty-five degrees, no minutes (45° 00'), forty-four and sixty-six one-hundredths (44.66) feet to a point; thence by a curve to the right with a radius of ninety-one (91) feet and a central angle of forty-five degrees, no minutes (45° 00'), seventy-one and forty-seven one-hundredths (71.47) feet to a point; thence north forty-three degrees, no minutes east (N. 43° 00' E.), one hundred seventy-seven and five-tenths (177.5) feet to a point; thence south forty-seven degrees; no minutes east (S. 47° 00' E.), one hundred fifty-seven and five-tenths (157.5) feet to the point of beginning, containing ninety-one onehundredths (0.91) acres, more or less. All bearings are referred to true meridian (Panama-Colon Datum).

VI

The harbor of Colon shall consist of those maritime waters lying to the westward of the City of Colon and bounded as follows:

The southerly boundary of the harbor of Colon is in a line running north seventy-eight degrees, thirty minutes and thirty seconds west (N. 78° 30′ 30″ W.), which begins at a cross cut in the concrete sea wall on the easterly side of Limon Bay and on the center line of Eleventh Street, Colon, produced westerly. This point is marked "D" on the map designated exhibit "C." Beginning at mean low water mark on Limon Bay on the above described line the boundary runs northwesterly along said line to a point in Limon Bay marked "E" on the map, and located three hundred and thirty (330) meters east of the center line of the Panama Canal; thence turning to the right and running in a northerly direction the line runs parallel with the above mentioned center line and at a distance of three hundred and thirty (330) meters easterly therefrom until it meets an imaginary straight line drawn through the lighthouse on Toro Point having a bearing of south seventy-eight degrees and thirty minutes and thirty seconds east (S. 78° 30′ 30″ E.), this intersection point being marked "F" on the map; thence turning to the right and running along the above-mentioned line south seventy-eight degrees, thirty minutes and thirty seconds east (S. 78° 30′ 30″ E.) to a point on the boundary of the above-mentioned site for the United States battery; thence turning to the right and running along the said boundary line of said site to the mean low water line of Limon Bay; thence turning to the right and running along said water line in a generally southerly direction to the point of beginning at the foot of Eleventh Street.

All bearings in this description and on the plan mentioned above are referred to true meridian (Panama-Colon Datum).

The foregoing description of the City of Colon and Colon Harbor conform to the accompanying blue print marked exhibit "C."

VII

It is agreed that the Republic of Panama shall have an easement over and through the waters of the Canal Zone in and about Limon and Manzanillo bays to the end that vessels trading with the City of Colon may have access to and exit from the harbor of Colon, subject to the police laws and quarantine and sanitary rules and regulations of the United States and of the Canal Zone established for said waters. The United States also agrees that small vessels may land at the east wall which extends along the shore to the south of the foot of Ninth Street and recently constructed by the Panama Railroad Company in the harbor of Colon free of any wharfage or landing charges that might otherwise accrue to the said company under the terms of its concessions from the Government of Colombia; and the United States further agrees that it will construct and maintain a landing pier in a small cove on the southerly side of Manzanillo Island in the north-westerly portion of the arm of the sea known as Boca Chica (sometimes called Folks River), to be used as a shelter harbor for small coasting boats of the Republic of Panama, without any wharfage or other landing charges.

VIII

Inasmuch as the highway known as the "Sabanas Road" will come entirely within the bounds of the City of Panama under this agreement the authorities of the Canal Zone are hereby relieved of the duty to repair and maintain such road, or any part of it, and the same shall be done henceforth by the authorities of the Republic at their cost and expense.

IX

It is agreed that the Republic of Panama will not construct nor allow the construction of any railway across the Sabanas or other territory hereby transferred to that Republic without a mutually satisfactory agreement having been previously arrived at between the two governments; and this shall be without prejudice to any right the United States may have to object to such railway projection under any of the provisions of the Canal Treaty of November 18, 1903.

X

The contracting parties hereby agree that this convention shall not diminish, exhaust, or alter any rights acquired by them heretofore in conformity with the Canal Treaty of November 18, 1903; and it is further expressly agreed that the United States, in the exercise of the rights granted to it under Articles II and III of the said Canal Treaty and subject to Article VI of said treaty, may enter upon and use, occupy, and control the whole or any portion of the Sabanas land, or other territory hereby transferred to the Republic of Panama, as the same may be necessary, or convenient, for the construction, maintenance, operation,

sanitation, or protection of the Canal or of any auxiliary canals, or other works necessary and convenient for the construction, maintenance, operation, sanitation, or protection of said enterprise.

XI

This agreement shall not be construed to modify the rights of the authorities of the Canal Zone to employ citizens of the Republic of Panama residing in the territory of the Republic as provided in section V of the above-mentioned agreement of June 15, 1904, and for which purpose the Government of the Republic granted the permission required by paragraph 2 of Article 7 of the Panamanian Constitution.

XII

The civil and criminal cases pending in the courts of the Canal Zone and the Republic of Panama at the time of the execution of this convention shall not be affected hereby but the same shall be proceeded with to final judgment and disposed of in the courts where they are now pending as though this agreement had not been entered into.

XIII

The exhibits accompanying this agreement are signed by the representatives of the respective governments for identification. This convention, when signed by the plenipotentiaries of the high contracting parties, will be ratified by the two governments in conformity with their respective constitutional laws, and the ratifications shall be exchanged at Panama at the earliest date possible.

In faith whereof the respective plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Panama, the second day of September, in the year of our Lord, nineteen hundred and fourteen.

SEAL.

WILLIAM JENNINGS PRICE,

[SEAL.]

E. T. Lefévre.



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NOTES OF AUSTRIA, FRANCE AND PRUSSIA TO THE UNITED STATES REGARDING THE TRENT AFFAIR, $1861^{\,1}$

Mr. Thouvenel to Mr. Mercier

Sir:

Paris, December 3, 1861.

The arrest of Messrs. Mason and Slidell on board the English packet Trent by an American cruiser has caused, in France, if not the same feeling as in England, at any rate the utmost astonishment and no little sensation. Public opinion immediately concerned itself with the legality and the consequences of such an act, and not for an instant has there been any doubt as to the impression made upon public opinion. The affair seemed to be so out of harmony with the ordinary rules of international law that the public mind has been pleased to lay the whole responsibility at the door of the commanding officer of the San Jacinto. We are not in a position to know whether this supposition is correct, and the Government of the Emperor has therefore been obliged to examine the question raised by the removal of the two passengers from the Trent. The desire to aid in preventing a conflict, which is perhaps imminent, between two Powers, for both of whom it entertains the same friendly sentiments, and the duty to maintain certain principles essential to the security of neutrals, in order to protect from violation the rights of its own flag, have convinced it, after careful reflection, that it could not remain wholly silent under these circumstances.

If the Washington Cabinet were, to our great regret, disposed to approve the conduct of the commanding officer of the San Jacinto, it would do so by considering Messrs. Mason and Slidell as enemies or by holding them to be merely rebels. In either case, it would be most unfortunately forgetful of principles upon which we had always found the United States in accord with us.

On what grounds, in the first instance, could the American cruiser have arrested Messrs. Mason and Slidell? In treaties between the two

¹ Printed in Bernard, The Neutrality of Great Britain during the American Civil War, pp. 196–200. The Austrian and French notes have been translated from the French by George D. Gregory, of Washington, D. C.

countries, the United States has joined with us in recognizing that the freedom of the flag extends to persons on board a vessel, even though they be enemies of one of the two parties, unless they are actually in the military service of the enemy. Messrs. Mason and Slidell were, therefore, by virtue of this principle, which we have never had any difficulty in having inserted in our treaties of amity and commerce, absolutely free, under the neutral flag of England. It surely will not be contended that they might be considered contraband of war. It is true that it has not yet been definitely determined what constitutes contraband of war, and that all Powers have not set the same limits in this respect. However, in so far as individuals are concerned, the special provisions to be found in treaties relating to military persons define those who may be seized by belligerents. Now, it is not necessary to show that Messrs. Mason and Slidell could not be considered as belonging to that category. Hence there would remain only one pretext that could be urged in explanation of their capture, namely, that they were bearers of despatches of the enemy. In this connection it is not out of place to recall a circumstance which dominates this whole case and which renders the conduct of the American cruiser unjustifiable. The Trent was not bound for a point belonging to either of the belligerents. It was conveying its cargo and passengers to a neutral country, and it had embarked them in a neutral port. If it were admissible that, under such conditions, a neutral flag did not completely cover the persons and cargo on board, its immunity would be merely an empty word. The commerce and navigation of third Powers would constantly have to suffer for their innocent or even indirect relations with one or the other of the belligerents. latter would consider not only that they had the right to require complete impartiality of a neutral, to forbid his taking part in hostile acts; but they would likewise hamper his freedom of commerce and of navigation with restrictions, whose legality modern international law has refused to admit. In a word, there would be a return to vexatious practices, against which in times past no Power has more loudly protested than the United States.

If the Washington Cabinet were inclined to look upon the two arrested individuals merely as rebels, whom it might rightfully seize at all times, even this change of ground could not justify the conduct of the commanding officer of the San Jacinto. Such a stand would involve disregard of the principle that a vessel is part of the territory of the nation whose flag it flies and violation of the immunity, as a result of which a

foreign sovereign may not exercise his jurisdiction thereon. There is no need to recall the energy with which the Government of the United States has on all former occasions defended this immunity and the right of asylum, which is its consequence.

Not wishing to enter into a more exhaustive discussion of the questions raised by the capture of Messrs. Mason and Slidell, I have, I believe, said enough to show that the Washington Cabinet cannot, without infringing principles which it is to the interest of all neutral Powers to have respected, or without appearing to act contrary to its own conduct up to the present time, approve the action of the commanding officer of the San Jacinto. Such being the case, there should not, in our opinion, be any hesitation on the part of the Washington Cabinet in determining the course to follow. Lord Lyons is already instructed to present the demands for satisfaction, which the English Government is obliged to formulate—namely, the immediate release of the individuals taken from the Trent and explanations disavowing the act in question as an offence to the British flag.

The Federal Government will be inspired by a just and lofty sentiment in complying with these demands. It would be vain to seek for any object or purpose in risking a break with Great Britain by adopting a different attitude. As for us, who would see in such a course a deplorable complication in all respects of the difficulties, with which the Washington Cabinet already has to struggle; and a precedent calculated seriously to disquiet all the Powers remaining outside of the present dispute, we consider it, on our part, an act of loyal friendship to the Washington Government, in the present circumstances, not to leave it in ignorance of our point of view. I request you, therefore, to seize the first opportunity to discuss the matter frankly with Mr. Seward, and, if he so requests, to deliver to him a copy of this despatch.

Receive, etc.

(Signed) THOUVENEL.

M. MERCIER.

Count Bernstorff to Baron Gerolt

M. le Baron:

Berlin, December 25, 1861.

The maritime operations undertaken by President Lincoln against the Southern seceding States could not, from their very commencement, but fill the King's Government with apprehensions lest they should result in possible prejudice to the legitimate interests of neutral Powers.

These apprehensions have unfortunately proved fully justified by the forcible seizure on board the neutral mail-packet the *Trent*, and the abduction therefrom, of Messrs. Slidell and Mason by the Commander of the United States' man-of-war the *San Jacinto*.

This occurrence, as you can well imagine, has produced in England and throughout Europe the most profound sensation, and thrown not Cabinets only, but also public opinion, into a state of the most excited expectation. For, although at present it is England only which is immediately concerned in the matter, yet, on the other hand, it is one of the most important and universally recognized rights of the neutral flag which has been called into question.

I need not here enter into a discussion of the legal side of the question. Public opinion in Europe has, with singular unanimity, pronounced in the most positive manner for the injured party. As far as we are concerned, we have hitherto abstained from expressing ourselves to you upon the subject, because in the absence of any reliable information we were in doubt as to whether the Captain of the San Jacinto, in the course taken by him, had been acting under orders from his Government or not. Even now we prefer to assume that the latter was the case. Should the former supposition, however, turn out to be the correct one, we should consider ourselves under the necessity of attributing greater importance to the occurrence, and to our great regret we should find ourselves constrained to see in it not an isolated fact but a public menace offered to the existing rights of all neutrals.

We have as yet no certain information as to the demands made by England on the American Cabinet, upon the acceptance of which the maintenance of peace appears to depend. As far, however, as our information reaches on the subject, we are convinced that no conditions have been put forward by the British Government which could justly offend President Lincoln's sense of honor.

His Majesty the King, filled with the most ardent wishes for the welfare of the United States of North America, has commanded me to advocate the cause of peace with President Lincoln through your instrumentality, to the utmost of my power. We should reckon ourselves fortunate if we could in this wise succeed in facilitating the peaceful solution of a conflict from which the greatest dangers might arise. It is possible, however, that the President has already taken his decision and

announced it. Whatever that decision may be, the King's Government, when they reflect upon the uninterrupted relations of friendship and amity which have existed between Prussia and the United States ever since the latter were founded, will derive satisfaction from the thought of having laid with the most unreserved candor their views of this occurrence before the Cabinet of Washington and expressed the wishes which they entertain in connection with it.

You will read this despatch without delay to the Secretary of State for Foreign Affairs, and, should he desire it, you will give him a copy of it. I shall await your report upon the instructions contained in this despatch, and I avail, etc.

(Signed) BERNSTORFF.

Count Rechberg to M. de Hulsemann

(Confidential)

VIENNA, December 18, 1861.

The difference that has arisen between the Government of the United States and that of Great Britain as a result of the arrest of Messrs. Slidell and Mason, by the captain of the American war-ship San Jacinto, on board the English packet Trent has not failed to engage the serious attention of the Imperial Cabinet.

The greater the importance that we attach to the maintenance of friendly relations between the United States and England, the more we have had to regret an incident which has added to a situation already bristling with difficulties so serious a complication.

It is not our intention to enter into an examination of the question of law, and yet we cannot disregard the fact that according to the concepts of international law which have been adopted by all Powers and which the American Government itself has frequently followed as rules of conduct, England could scarcely refrain in the present case from protesting against the offense committed against its flag and from asking for just reparation. It seems to us, moreover, that the demands formulated to this end by the Cabinet of St. James contain nothing to offend the Washington Cabinet, and that the latter will find it possible to perform an equitable and reasonable act without the slightest loss of dignity.

By taking counsel of the rules governing international relations, as well as of considerations of an enlightened policy, rather than by seeking Receive, etc.

guidance from manifestations caused by an over-excitement of national feeling, the Government of the United States will, we are pleased to hope, consider the matter with the calm mind that the gravity of the case requires and will see fit to decide upon a course which, by keeping unbroken the relations between two great States, for both of which Austria entertains an equal friendship, will be calculated to prevent the serious disturbances which the eventuality of a war could not fail to bring on, both with respect to each of the contending parties and with respect to the affairs of the world at large.

Kindly bring the foregoing reflections to the attention of Mr. Seward and inform us how the Secretary receives your communication.

(Signed) RECHBERG.

NOTES EXCHANGED BETWEEN GREAT BRITAIN AND CHILE RESPECTING THE SINKING OF THE GERMAN CRUISER "DRESDEN" IN CHILEAN TERRITORIAL WATERS $^{\rm 1}$

No. 1

The Chilean Minister to Sir Edward Grey

[Translation]

CHILEAN LEGATION, London, March 26, 1915.

Sir:

In compliance with instructions from my Government, I have the honor to inform your Excellency of the facts which led to the sinking of the German cruiser *Dresden* in Chilean territorial waters, as they appear to be established by the information in the possession of the Chilean Government.

The cruiser cast anchor on the 9th March in Cumberland Bay, in the Island of Mas-a-Tierra, belonging to the Juan Fernandez group, 500 metres from the shore, and her commander asked the Maritime Governor of the port for permission to remain there for eight days for the purpose

¹ British Parliamentary Papers, Miscellaneous No. 9 (1915). [Cd. 7859.]

of repairing her engines, which were, he said, out of order. The Maritime Governor refused to grant the request, as he considered it unfounded, and ordered the captain to leave the bay within twenty-four hours, threatening to intern the cruiser if her stay were prolonged beyond that period. Upon the expiry of the time stated the Maritime Governor proceeded to notify the captain of the *Dresden* that he had incurred the penalty imposed, and he immediately reported the situation which had arisen to the Governor of the Republic. Meanwhile, on the 14th March, a British naval squadron, composed of the cruisers *Kent* and *Glasgow* and the armed transport *Orama*, arrived at Cumberland Bay and immediately opened fire upon the *Dresden* while she lay at anchor. The Maritime Governor, who was making his way towards the *Glasgow* in order to carry out the usual obligations of courtesy, was compelled to return to land.

The *Dresden* hoisted a flag of truce, and despatched one of her officers to inform the *Glasgow* that she was in neutral waters, a circumstance disregarded by the British naval squadron, which summoned the *Dresden* to surrender, warning her that if she refused she would be destroyed. The captain of the *Dresden* then gave orders to blow up the powder magazine and sink the ship.

The act of hostility committed in Chilean territorial waters by the British naval squadron has painfully surprised my Government.

The internment of the *Dresden* had been notified to her captain by the Maritime Governor of Juan Fernandez, and the Government of the Republic, having been informed of what had occurred, would have proceeded to the subsequent steps had it not been for the intervention of the British naval squadron. Having regard to the geographical position of the Islands of Juan Fernandez and to the difficulty of communication with the mainland, the only authority able to act in the matter did everything possible from the outset, and the internment of the Dresden was as effective and complete as the circumstances would permit when she was attacked by the British naval squadron. Even supposing that the British force feared that the *Dresden* intended to escape and to ignore the measures taken by the Maritime Governor of Juan Fernandez, and that this apprehension was adduced as the reason which determined its action, it should still be observed that the close watch which the British naval squadron could itself exercise precluded the possibility of the attempt. Moreover, no such eventuality was contemplated by the British squadron which, as I have said, did not give the Maritime Governor of Mas-a-Tierra the opportunity of explaining to the naval officer in command of the island the state of the *Dresden* in Cumberland Bay. The officer in command of the squadron acted à priori without pausing to consider that his action constituted a serious offence against the sovereignty of the country in whose territorial waters he was at the time. The traditions of the British Navy are such that I feel convinced that if the officer who commanded the British squadron had received the Maritime Governor, who was going on board his ship in the fulfilment of his duty, and had been informed of the state of the interned vessel, he would not have opened fire upon her and would not have brought about the situation which now constrains my Government, in defence of their sovereign rights, to formulate the most energetic protest to His Britannic Majesty's Government.

Your Excellency will not be surprised that the attitude of the naval squadron should have aroused such deep feeling in Chile if you bear in mind the fact that the British warships composing it had received, shortly before and upon repeated occasions, convincing proofs of the cordial friendship which unites us to Great Britain, and which finds its clearest and strongest expression in our respective navies. They had been supplied in the ports of the republic with everything which it was permissible for us to furnish consistent with our neutrality in the present European conflict. Nothing, therefore, could be a more painful surprise to us than to see our exceedingly cordial and friendly attitude repaid by an act which bears unfortunately all the evidences of contempt for our sovereign rights, although it is probable that nothing was further from the minds of those by whom it was unthinkingly committed.

Nor will your Excellency be astonished that my Government should show themselves to be very jealous of the rights and prerogatives inherent in the exercise of sovereignty. Nations which lack powerful material means of making their rights respected have no other guarantee and protection for their life and prosperity than the clear and perfect understanding, and the exact and scrupulous fulfilment of the obligations incumbent upon them towards other nations, and the right to demand that other nations shall equally observe their duties towards them. Few nations have given more convincing proofs than Great Britain of their desire to comply with international obligations and to require compliance from others, and few have shown more eloquently their respect for the rights and prerogatives both of great and small nations. These facts convince my Government that His Britannic Majesty's Govern-

ment will give them satisfaction for the act committed by the British naval forces of a character to correspond with the frankly cordial relations existing between them. Nothing could be more deeply deplored by the Chilean Government than that the traditional bonds of friendship uniting the two peoples, which my Government value so highly, and upon which they base so many hopes of new and mutual benefits, should fail to derive on this occasion additional strength from the test to which circumstances have subjected them.

I have, etc.,

AGUSTIN EDWARDS.

No. 2

Sir Edward Grey to the Chilean Minister

Foreign Office, March 30, 1915.

Sir:

His Majesty's Government, after receiving the communication from the Chilean Government of the 26th March, deeply regret that any misunderstanding should have arisen which should be a cause of complaint to the Chilean Government; and, on the facts as stated in the communication made to them, they are prepared to offer a full and ample apology to the Chilean Government.

His Majesty's Government, before receiving the communication from the Chilean Government, could only conjecture the actual facts at the time when the *Dresden* was discovered by the British squadron; and even now they are not in possession of a full account of his action by the captain of the Glasgow. Such information as they have points to the fact that the *Dresden* had not accepted internment, and still had her colors flying and her guns trained. If this was so, and if there were no means available on the spot and at the moment for enforcing the decision of the Chilean authorities to intern the *Dresden*, she might obviously, had not the British ships taken action, have escaped again to attack British commerce. It is believed that the island where the *Dresden* had taken refuge is not connected with the mainland by cable. In these circumstances, if the Dresden still had her colors flying and her guns trained, the captain of the Glasgow probably assumed, especially in view of the past action of the *Dresden*, that she was defying the Chilean authorities and abusing Chilean neutrality, and was only awaiting a favorable opportunity to sally out and attack British commerce again.

If these really were the circumstances, His Majesty's Government cannot but feel that they explain the action taken by the captain of the British ship; but, in view of the length of time that it may take to clear up all the circumstances and of the communication that the Chilean Government have made of the view that they take from the information they have of the circumstances, His Majesty's Government do not wish to qualify the apology that they now present to the Chilean Government.

I have, etc., E. Grey.

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF GREAT BRITAIN AND THE GOVERNMENT OF THE FRENCH REPUBLIC RESPECTING THE TRADE IN ARMS AND AMMUNITION AT MUSCAT ¹

London, February 4, 1914

No. 1

M. Cambon to Sir Edward Grey

[Translation]

French Embassy, London, February 4, 1914.

Sir,

Your Excellency has repeatedly pointed out to me the serious inconveniences resulting from the organization of the traffic in arms and munitions of war in the Sultanate of Muscat, adjoining His Majesty's Indian Empire.

My Government, desirous of strengthening the good relations which so happily exist between France and Great Britain, have wished to give fresh proof of the feelings which inspire them, and have instructed me to declare to your Excellency that they renounce their claims, in favor of their nationals, to the benefit of the privileges and immunities conferred on these latter by the Franco-Muscat Treaty of the 17th November, 1844, in cases where these privileges and immunities would hinder the application of regulations and laws intended to prevent contraband traffic in arms and munitions of war in the Sultanate of Muscat.

Consequent upon this decision, the French consul at Muscat will receive immediately the necessary instructions to inform the Sultan

¹ Great Britain, Treaty Series, 1914, No. 9.

that the French Government cease to oppose the application to their nationals of the Muscat edict of the 4th June, 1912, which was put into force on the 12th September following, and which dealt with the trade in arms and munitions of war.

I propose further that our two Governments should concert together with regard to any modification or amendment which the Sultan of Muscat may wish to make in the regulations referred to above, and I can assure your Excellency that, under these conditions, the Government of the Republic, after having examined such modifications or amendments and ascertained that they deal only with the trade in arms and munitions of war in the Sultanate, will not oppose their application to their nationals in Muscat.

It is to be understood that French nationals in Muscat will be placed on the same footing as subjects of His Majesty the King as regards the trade in arms and munitions of war.

Your Excellency knows how strongly public opinion in France is opposed to the renunciation of any rights or immunities conferred on French nationals abroad by treaties and by tradition; the Government of the Republic have disregarded this opposition, because they have wished to give Great Britain a proof of their firm friendship, and also because they have become convinced of the dangers which would be presented by the organization of contraband of war in regions adjoining the distant possessions of the European Powers. It is possible that the illicit traffic in arms and munitions of war may find it advantageous to establish itself in regions adjoining French colonies or protectorates, and my Government do not doubt that the British Government will, in similar circumstances, lend their aid for the suppression of this traffic. I should be glad if your Excellency would be so good as to give me this assurance.

Please receive, &c.

PAUL CAMBON.

No. 2

Sir Edward Grey to M. Cambon

FOREIGN OFFICE, February 4, 1914.

Your Excellency,

I have the honor to acknowledge the receipt of your Excellency's note of to-day's date stating that the French Government, in view of

the relations of cordial friendship at present happily existing between Great Britain and France, renounce the right of invoking, on behalf of French citizens and protected persons, the privileges conferred on these persons by the Treaty of 1844 between France and Muscat, in so far as such privileges and immunities are opposed to the regulations and laws for the prevention of the contraband trade in arms and ammunition in the dominions of the Imaum of Muscat.

I note that, in pursuance of this decision, the French consul at Muscat will immediately receive the necessary instructions to declare to the Sultan that the French Government will no longer oppose the application to French nationals of the Sultan's edict of the 4th June, 1912, respecting the trade in arms and ammunition.

I further have the honor to inform your Excellency that His Majesty's Government agree to the proposal that the two Governments shall concert together with regard to any modification or amendment which the Sultan of Muscat may desire to introduce into the above-mentioned regulations in order that the French Government, having satisfied themselves by examination that such modifications or amendments relate solely to the trade in arms and ammunition in the Sultanate, may give their consent to the application of such modifications or amendments to their nationals at Muscat. It is of course understood that His Majesty's Government will use their influence with the Sultan of Muscat to ensure that French nationals in the Sultanate will, as regards the trade in arms and ammunition, receive in all respects the same treatment as British subjects and protected persons.

His Majesty's Government appreciate very highly the sentiments which have animated the French Government in their consideration of the question of the trade in arms and ammunition at Muscat, and rendered possible the understanding defined in this exchange of notes. They fully agree with the views held by the French Government as to the dangers which may result from the organization of a contraband trade in war material in the neighborhood of distant possessions of European Powers, and I am happy to be able to assure your Excellency that, in the event of such an illicit trade being established in the neighborhood of any of the French colonies or protectorates, His Majesty's Government will be prepared to assist, in so far as they may be in a position to do so, in the suppression of the traffic.

I have, &c.

E. GREY.

No. 3

Sir Edward Grey to Sir F. Bertie

Foreign Office, February 4, 1914.

Sir,

After I had exchanged with the French Ambassador to-day the notes about Muscat he made verbally the following declaration to me:

TRANSLATION

"The French Government will not decline to examine any new regulation dealing with the arms trade at Muscat, even though such regulation may involve customs measures in territorial waters, on the express condition that the exterritorial rights of French citizens at Muscat and the jurisdiction of French consuls shall be respected. The French Government could not concur in a procedure involving the right of search."

On this I observed that the rights of the Treaty of 1844 would be respected, and were applicable on sea as on land.

I am, &c.

E. GREY.

memorandum of the german government in regard to incidents alleged to have attended the destruction of a german submarine and its crew by the british auxiliary cruiser "baralong" on august 19, 1915, and reply of the british government thereto 1

No. 1

Mr. Page, United States Ambassador in London, to Sir Edward Grey

The American Ambassador presents his compliments to His Majesty's Secretary of State for Foreign Affairs, and has the honor to transmit herewith a copy of a memorandum delivered by the German Government to the Ambassador at Berlin, from whom Mr. Page has received it direct, relating to the alleged destruction off the coast of Ireland on the 19th August last of a German submarine and its crew by a vessel described as His Britannic Majesty's auxiliary cruiser Baralong.

¹ British Parliamentary Papers, Miscellaneous No. 1 (1916). [Cd. 8144.]

Mr. Page has received explicit instructions by telegraph from his Government to transmit this document without comment to Sir Edward Grev.

AMERICAN EMBASSY, London, December 6, 1915.

Enclosure in No. 1

[Translation]

Memorandum from the German Government concerning the Murder of the Crew of a German Submarine by the Commander of the British Auxiliary Cruiser Baralong

Before the public notaries, Mr. E. Ansley, in the county of Hancock in the State of Mississippi, and Charles J. Denechaud, in the municipality of Orleans in the State of Louisiana, on the 5th and 8th October, 1915, six citizens of the United States of America made the annexed sworn depositions ² concerning the murder of the crew of a German submarine by the commander of the British auxiliary cruiser *Baralong*. (Annexes 1 to 3.)

The names of these witnesses are:

- 1. J. M. Garrett, of Kiln, in the county of Hancock, Mississippi.
- 2. Charles D. Hightower, of Crystal City, Texas.
- 3. Bud Emerson Palen, of Detroit, Michigan.
- 4. Edward Clark, of Detroit, Michigan.
- 5. R. H. Cosby, of Crystal City, Texas.
- 6. James J. Curran, of Chicago, Illinois.

The ages of the witnesses are: Clark and Cosby, 21 years; Garrett and Hightower, 22; Palen, 27; Curran, 32. According to enquiries made on the spot, all enjoy a good reputation; Curran was for a considerable time employed as commercial traveller in various large American business houses.

According to the unanimous statements of these witnesses, the occurrence took place as follows: In August, 1915, the British steamer-

² Depositions not printed in this Supplement. The statements in them are summarized in the German memorandum.—Ed.

Nicosian was on her way from New Orleans to Avonmouth. She carried about 350 mules for war purposes, thus being laden with contraband. The witnesses were shipped as muleteers and superintendents. On the 19th August, about 70 nautical miles south of Queenstown (Ireland), the steamer was stopped by a German submarine and fired on, after the whole crew, including the witnesses, had first left the ship in the lifeboats.

When the witnesses were in the life-boats outside the line of fire from the submarine, a steamer which had been already noticed by the witnesses, Garrett, Hightower, Clark, and Curran, when still on board the Nicosian, approached the spot. This, as afterwards transpired, was the British auxiliary cruiser Baralong. As this steamer approached all the witnesses noticed clearly that she was flying the American flag at the stern and that she carried on her sides large shields with the American flag painted on them. As the steamer carried the distinguishing marks of a neutral ship and had shown signals, which according to the seafaring members of the crew of the Nicosian meant that she was willing to assist if desired, and as there was nothing in her outward appearance to indicate her warlike character, the crew in the life-boats presumed that she was merely concerned with their rescue.

While the submarine was firing at close range on the port side of the *Nicosian*, the unknown steamer came up behind the latter and steamed past on her starboard side. When she was a short distance ahead of the *Nicosian's* bow, she opened fire on the submarine at first, as all the witnesses, with the exception of Garrett, affirm, with small arms, and immediately afterwards with cannon, which had been hidden up to that time by screens, and were only visible when the latter were removed. The witness Curran also deposed that the American flag flying at the stern of the unknown ship was only lowered after the rifle fire. He repeated this statement in the enclosed affidavit made before the public notary, Robert Schwarz, at New York, on the 21st October, 1915. (Annex No. 4.)

As the submarine after being struck several times began to sink, the commander and a number of seamen sprang overboard, the seamen having first removed their clothes. Some of them (the number is given by the witnesses Garrett and Curran as five) succeeded in getting on board the *Nicosian*, while the remainder seized the ropes left hanging in the water when the *Nicosian's* life-boats were lowered. The men clinging to the ropes were killed partly by gun-fire from the *Baralong* and partly

by rifle fire from the crew, while the witnesses were boarding the *Baralong* from the life-boats or were already on her deck. With regard to this, the witness Curran also further testifies that the commander of the unknown ship ordered his men to line up against the rail and to shoot at the helpless German seamen in the water.

Next the commander of the Baralong steamed alongside the Nicosian, made fast to the latter, and then ordered some of his men to board the Nicosian and search for the German sailors who had taken refuge there. The witnesses Palen and Curran testify regarding this incident that the commander gave the definite order "to take no prisoners." Four German sailors were found on the Nicosian, in the engine-room and screw tunnel, and were killed.

The commander of the submarine, as the witnesses unanimously testify, succeeded in escaping to the bows of the *Nicosian*. He sprang into the water and swam round to the bow of the ship towards the *Baralong*. The English seamen on board the *Nicosian* immediately fired on him, although, in a manner visible to all, he raised his hands as a sign that he wished to surrender, and continued to fire after a shot had apparently struck him in the mouth. Eventually he was killed by a shot in the neck.

All the witnesses were then temporarily ordered back on board the *Nicosian*. There the witnesses Palen and Cosby each saw one body of a German sailor, while the witness Curran—who remained on board the steamer with members of the crew absolutely necessary to man her—saw all four bodies, which were thrown overboard in the afternoon.

The commander of the Baralong had the Nicosian towed for a few miles in the direction of Avonmouth, and then sent back to the Nicosian the remainder of the crew who were still on the Baralong; at the same time he sent a letter to the captain of the Nicosian, in which he requested the latter to impress on his crew, especially the American members of it, to say nothing about the matter, whether on their arrival at Liverpool or on their return to America. The letter, which the witness Curran himself has read, was signed "Captain William McBride, H. M. S. Baralong." That the unknown vessel was named the Baralong was discovered also by the witness Hightower from a steward of the steamer, when he (the witness) was on board this ship; while the witness Palen deposes that he, when he was leaving the ship, saw this name indistinctly painted on the bows.

The statements of the six witnesses are in substance corroborated by the 18 year-old witness, Larimore Holland, whose sworn statement before the public notary, Frank S. Carden, in the county of Hamilton, Tennessee, on the 12th October, 1915, is also annexed (Annex 5). The witness, who was a stoker on board the *Baralong*, was on board that ship when this unparalleled incident occurred.

According to his statement also, the Baralong hoisted the American flag, and, covered by the Nicosian, steamed towards the scene where, as soon as the submarine was visible, she opened fire on the latter and sunk her. He further states that about fifteen men of the submarine's crew sprang overboard as she sank and were killed by rifle and gun-fire from the Baralong, some while they were swimming in the water and others as they were trying to climb up the ropes of the Nicosian. If his statement differs in details from the statements of the other witnesses, this evidently is caused by the fact that he himself only witnessed some of the incidents, and that he apparently only knows by hearsay of other incidents, notably those which occurred on board the Nicosian.

By reason of the above evidence there can be no doubt that the commander of the British auxiliary cruiser *Baralong*, McBride, gave the crew under his command the order not to make prisoner certain helpless and unarmed German seamen, but to kill them in a cowardly manner; also that his crew obeyed the order, and thus shared the guilt for the murder.

The German Government inform the British Government of this terrible deed, and take it for granted that the latter, when they have examined the facts of the case and the annexed affidavits, will immediately take proceedings for murder against the commander of the auxiliary cruiser Baralong and the crew concerned in the murder, and will punish them according to the laws of war. They await in a very short time a statement from the British Government that they have instituted proceedings for the expiation of this shocking incident; afterwards they await information as to the result of the proceedings, which should be hastened as much as possible, in order that they may convince themselves that the deed has been punished by a sentence of corresponding severity. Should they be disappointed in this expectation, they would consider themselves obliged to take serious decisions as to retribution for the unpunished crime.

Berlin, November 28, 1915.

No. 2

Sir Edward Grey to Mr. Page, United States Ambassador in London Foreign Office, December 14, 1915.

Your Excellency:

I have had the honor of receiving your communication of the 6th instant, covering a memorandum of the German Government in regard to incidents alleged to have attended the destruction of a German submarine and its crew by H. M. auxiliary cruiser *Baralong* on the 19th August last.

The German Government base on these alleged incidents a demand that the commanding officer and other responsible parties on board H. M. S. Baralong shall be brought to trial for murder and duly punished.

His Majesty's Government note with great satisfaction, though with some surprise, the anxiety now expressed by the German Government that the principles of civilized warfare should be vindicated, and that due punishment should be meted out to those who deliberately disregard them. It is true that the incident which has suddenly reminded the German Government that such principles exist is one in which the alleged criminals were British and not German. But His Majesty's Government do not for a moment suppose that it is the intention to restrict unduly the scope of any judicial investigation which it is thought proper to institute.

Now it is evident that to single out the case of the Baralong for particular examination would be the height of absurdity. Even were the allegations on which the German Government rely accepted as they stand (and His Majesty's Government do not so accept them), the charge against the commander and crew of the Baralong is negligible compared with the crimes which seem to have been deliberately committed by German officers, both on land and sea, against combatants and non-combatants.

Doubtless the German Government will urge that the very multitude of these allegations would so overload any tribunal engaged in their examination as utterly to defeat the ends of justice. If, for example, a whole army be charged with murder, arson, robbery, and outrage, it is plainly impossible to devote a separate enquiry to all the individuals who have taken a share in these crimes. These practical considerations cannot be ignored and His Majesty's Government admit their force. They would, therefore, be prepared, for the present, to confine any judicial

investigation to charges made against German and British officers at sea; and if even this restriction were thought insufficient, they would be content to call attention to three naval incidents which occurred during the same forty-eight hours in the course of which the *Baralong* sank the submarine and rescued the *Nicosian*.

The first incident relates to a German submarine which fired a torpedo into the Arabic and sank her. No warning was given to the merchant vessel; no efforts were made to save its unresisting crew; forty-seven non-combatants were ruthlessly sent to their death. It is understood that this act of barbarism, though in perfect harmony with the earlier policy of the German Government, was contrary to orders recently issued. This, however, if true, only increases the responsibility of the submarine commander; and His Majesty's Government have received no information indicating that the authorities have pursued in his case the course they recommend in the case of the crew of the Baralong, by trying him for murder.

The second incident occurred on the same day. A German destroyer found a British submarine stranded on the Danish coast. The submarine had not been pursued there by the destroyer; she was in neutral waters; she was incapable either of offence or defence. The destroyer opened fire upon her; and when her crew attempted to swim ashore the destroyer fired upon them also with no apparent object but to destroy a helpless enemy. There was here no excuse of hot blood; the crew of the British submarine had done nothing to rouse the fury of their opponents. They had not just murdered forty-seven innocent non-combatants. They were not taking possession of a German ship, or committing any act injurious to German interests. So far as His Majesty's Government know the facts, the officers and men of this destroyer committed a crime against humanity and the laws of war, which is at least as worthy of judicial enquiry as any other which has occurred during the course of recent naval operations.

The third incident occurred some forty-eight hours later. The steamer Ruel was attacked by a German submarine. The ship which had made no resistance began to sink, the crew took to their boats, and while endeavoring to save themselves were fired upon both with shrapnel and rifle fire. One man was killed, eight others (including the master) were severely wounded. The sworn testimony on which these statements are based shows no reason whatever which could justify this cold-blooded and cowardly outrage.

It seems to His Majesty's Government that these three incidents, almost simultaneous in point of time, and not differing greatly in point of character, might, with the case of the *Baralong*, be brought before some impartial court of investigation, say, for example, a tribunal composed of officers belonging to the United States navy. If this were agreed to, His Majesty's Government would do all in their power to further the enquiry, and to do their part in taking such further steps as justice and the findings of the court might seem to require.

His Majesty's Government do not think it necessary to make any reply to the suggestion that the British navy has been guilty of inhumanity. According to the latest figures available, the number of German sailors rescued from drowning, often in circumstances of great difficulty and peril, amounts to 1,150. The German navy can show no such record—perhaps through want of opportunity.

I have, etc.

E. GREY.

declaration withdrawing the british reservations in respect of articles 23, 27, and 28 of the red cross convention, 1906 1

BERNE, July 7, 1914.

The undersigned, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation, duly authorized by his Britannic Majesty for that purpose, hereby declares that the reservations with respect to Articles 23, 27, and 28, under which the International Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field was signed on behalf of the United Kingdom of Great Britain and Ireland on the 6th July, 1906, and ratified by His Britannic Majesty, the said ratification being deposited at Berne on the 16th April, 1907, are hereby withdrawn.

In witness whereof the undersigned has signed the present declaration and affixed thereto the seal of his arms.

Done at Berne, this 7th day of July, 1914.

(L.S.) EVELYN GRANT DUFF.

¹ Great Britain, Treaty Series, 1916, No. 1.

BRITISH STATEMENT OF THE MEASURES ADOPTED TO INTERCEPT THE SEABORNE COMMERCE OF GERMANY $^{\mathrm{1}}$

1. The object of this memorandum is to give an account of the manner in which the sea power of the British Empire has been used during the present war for the purpose of intercepting Germany's imports and exports.

I. Belligerent Rights at Sea

- 2. The means by which a belligerent who possesses a fleet has, up to the time of the present war, interfered with the commerce of his enemy are three in number:
 - (i) The capture of contraband of war on neutral ships.
 - (ii) The capture of enemy property at sea.
 - (iii) A blockade by which all access to the coast of the enemy is cut off.
- 3. The second of these powers has been cut down since the Napoleonic wars by the Declaration of Paris of 1856, under which enemy goods on a neutral ship, with the exception of contraband of war, were exempted from capture. Enemy goods which had been loaded on British or Allied ships before the present war were seized in large quantities immediately after its outbreak; but for obvious reasons such shipments ceased, for all practical purposes, after the 4th August, 1914, and this particular method of injuring the enemy may therefore, for the moment, be disregarded.

No blockade of Germany was declared until March, 1915, and therefore up to that date we had to rely exclusively on the right to capture contraband.

II. Contraband

- 4. By the established classification goods are divided into three classes:
- (a) Goods primarily used for warlike purposes.
- (b) Goods which may be equally used for either warlike or peaceful purposes.
- (c) Goods which are exclusively used for peaceful purposes.
- 5. Under the law of contraband, goods in the first class may be seized if they can be proved to be going to the enemy country; goods in the
 - ¹ British Parliamentary Papers, Miscellaneous No. 2 (1916). [Cd. 8145.]

second class may be seized if they can be proved to be going to the enemy government or its armed forces; goods in the third class must be allowed to pass free. As to the articles which fall within any particular one of these classes, there has been no general agreement in the past, and the attempts of belligerents to enlarge the first class at the expense of the second, and the second at the expense of the third, have led to considerable friction with neutrals.

- 6. Under the rules of prize law, as laid down and administered by Lord Stowell, goods were not regarded as destined for an enemy country unless they were to be discharged in a port in that country; but the American prize courts in the Civil War found themselves compelled by the then existing conditions of commerce to apply and develop the doctrine of continuous voyage, under which goods which could be proved to be ultimately intended for an enemy country were not exempted from seizure on the ground that they were first to be discharged in an intervening neutral port. This doctrine, although hotly contested by many publicists, had never been challenged by the British Government, and was more or less recognized as having become part of international law.
- 7. When the present war broke out it was thought convenient, in order, among other things, to secure uniformity of procedure among all the Allied forces, to declare the principles of international law which the Allied Governments regarded as applicable to contraband and other matters. Accordingly, by the Orders in Council of the 20th August and the 22nd October, 1914, and the corresponding French decrees, the rules set forth in the Declaration of London were adopted by the French and British Governments with certain modifications. As to contraband, the lists of contraband and free goods in the Declaration were rejected, and the doctrine of continuous voyage was applied not only to absolute contraband, as the Declaration already provided, but also to conditional contraband, if such goods were consigned to order, or if the papers did not show the consignee of the goods, or if they showed a consignee in enemy territory.
- 8. The situation as regards German trade was as follows: Direct trade to German ports (save across the Baltic) had almost entirely ceased, and practically no ships were met with bound to German ports. The supplies that Germany desired to import from overseas were directed to neutral ports in Scandinavia, Holland, or (at first) Italy, and every effort was made to disguise their real destination. The power

which we had to deal with this situation in the circumstances then existing was:

- (i) We had the right to seize articles of absolute contraband if it could be proved that they were destined for the enemy country, although they were to be discharged in a neutral port.
- (ii) We had the right to seize articles of conditional contraband if it could be proved that they were destined for the enemy government or its armed forces, in the cases specified above, although they were to be discharged in a neutral port.
- 9. On the other hand, there was no power to seize articles of conditional contraband if they could not be shown to be destined for the enemy government or its armed forces, or non-contraband articles, even if they were on their way to a port in Germany, and there was no power to stop German exports.
- 10. That was the situation until the actions of the German Government led to the adoption of more extended powers of intercepting German commerce in March, 1915. The Allied Governments then decided to stop all goods which could be proved to be going to, or coming from, Germany. The state of things produced is in effect a blockade, adapted to the condition of modern war and commerce, the only difference in operation being that the goods seized are not necessarily confiscated. In these circumstances it will be convenient, in considering the treatment of German imports and exports, to omit any further reference to the nature of the commodities in question as, once their destination or origin is established, the power to stop them is complete. Our contraband rights, however, remain unaffected, though they, too, depend on the ability to prove enemy destination.

III. German Exports

11. In carrying out our blockade policy great importance was from the outset attached to the stoppage of the enemy's export trade, because it is clear that to the extent that his exports can be stopped, and his power to establish credits for himself in neutral countries curtailed, his imports from such neutral countries will more or less automatically diminish. The identification of articles of enemy origin is, thanks to the system of certificates of origin which has been established, a comparatively simple matter, and the degree to which the policy of stop-

ping German and Austrian oversea exports has been successful can best be judged by looking at the statistics of German and Austrian imports into America.

- 12. The normal imports into the United States of America from Germany and Austria, before the war, for the seven months March to September inclusive, are valued approximately and in round figures at 124,000,000 dollars (£24,800,000). From March to September inclusive, this year's imports into the United States of America from those countries were valued at approximately 22,000,000 dollars This sum includes the goods which were already in (£4,400,000).neutral ports in the way of shipment or in transit when the further measures adopted by the Allied Governments were announced in March, and also a considerable proportion of those which have been allowed to pass in the circumstances mentioned in paragraph 14. A certain amount is also to be accounted for by goods received from Germany and Austria by parcel post, which it was not originally possible to stop effectively. Steps have now been taken to close this channel to enemy exports. The latest returns available, those for September, show that over 92 per cent. of the German exports to the United States of America have been stopped.
- 13. The above figures allow of but one conclusion: the oversea exports of Germany and Austria are very near extinction. It is of special interest to note that in the main these exports have not been merely diverted to the neutral countries adjacent to Germany. The imports which those countries have received from Germany have not in fact exceeded the normal quantities of previous years.
- 14. The object of the policy being to injure the enemy, the Allied Governments have in certain cases permitted the export of goods which had been ordered before the 1st March, and had been either paid for prior to that date or ordered before that date on terms which rendered the neutral purchaser liable to pay whether the goods reached him or not. It is clear that in these cases no harm would be done to the enemy, or pressure put upon him, by not allowing the goods to pass. On the contrary, he would, if that were done, both receive his price and retain the goods and their possible use. The total value of the goods with which the Allied Governments have undertaken not to interfere in such cases up to the end of 1915 is approximately £3,000,000. If the goods allowed to pass under this arrangement were deducted from the total enemy exports to the United States of America, it would be

seen that the amount of German exports which serve to increase the resources of the enemy is almost negligible.

IV. German Imports

15. As regards German imports, however, the problem is much more complicated. Its central difficulty is that of distinguishing between goods with an enemy destination from those with a genuine neutral destination. A belligerent who makes use of his naval power to intercept the commerce of his enemy has to justify his action in each particular case before a prize court, which is bound by international law and not by the ordinary law of the country in which it sits. It is not sufficient for him to stop a neutral vessel and remove from her such articles as he may believe to be intended for his enemy; it is necessary subsequently to demonstrate in a court of law that the destination of the goods was such as to justify the belligerent in seizing them. If this is not proved, the goods will be released, and damages may be awarded against the captor. It must also be remembered that, in order to justify the seizure of a particular consignment, it is necessary to satisfy the prize court of the enemy destination of that consignment, and evidence of a general nature, if unaccompanied by proofs directly bearing on a particular case, is not enough. All this applies as much to goods seized as contraband as it does to those seized for breach of blockade.

16. In earlier wars the production of the necessary proof was a comparatively simple matter. Owing to the difficulties of inland transport before the introduction of railways, goods for the enemy country were usually carried to ports in that country and the ship's papers showed their destination. When, therefore, the ship had been captured, the papers found on board were generally sufficient to dispose of the case. In the old cases of contraband, the question at issue was usually not where the goods were in fact going to, but whether their nature was such as to make them liable to condemnation in view of the destination shown on the ship's papers. Even in the American Civil War the difficulty of proving destination was usually not serious, because the neutral harbors through which the supply of goods for the Confederate States was carried on were in normal time ports of comparatively small importance, and it could be shown that in normal times there was no local market for goods of such quantities and character.

- 17. The case has been far different in the present war. The goods which Germany attempts to import are consigned to neutral ports, and it need hardly be said that the papers on board convey no suggestion as to their ultimate destination. The conditions of modern commerce offer almost infinite opportunities of concealing the real nature of a transaction, and every device which the ingenuity of the persons concerned, or their lawyers, could suggest has been employed to give to shipments intended for Germany the appearance of genuine transactions with a neutral country. The ports to which the goods are consigned, such as Rotterdam and Copenhagen, have in peace time an important trade, which increases the difficulty of distinguishing the articles ultimately intended to reach the enemy country from those which represent importation into the neutral country concerned for its own requirements. If action had to be taken solely on such information as might be gathered by the boarding officer on his visit to the ship, it would have been quite impossible to interfere to an appreciable extent with German imports, and the Allied Governments would therefore have been deprived of a recognized belligerent right.
- 18. In these circumstances, unless the Allied Governments were prepared to seize and place in the prize court the whole of the cargo of every ship which was on her way to a neutral country adjacent to Germany, and to face the consequences of such action, the only course open to them was to discover some test by which goods destined for the enemy could be distinguished from those which were intended for neutral consumption.
- 19. The first plan adopted for this purpose is to make use of every source of information available in order to discover the real destination of sea-borne goods, and to exercise to the full the right of stopping such goods as the information obtained showed to be suspect, while making a genuine and honest attempt to distinguish between *bona fide* neutral trade and trade which, although in appearance equally innocent, was in fact carried on with the enemy country.
- 20. For this purpose a considerable organization has been established in the Contraband Committee, which sits at the Foreign Office, and works in close touch with the Admiralty, Board of Trade, and War Trade Department. Nearly every ship on her way to Scandinavian or Dutch ports comes or is sent into a British port for examination, and every item of her cargo is immediately considered in the light of all the information which has been collected from the various sources open to

the government, and which, after nearly a year and a half of war, is very considerable. Any items of cargo as to which it appears that there is a reasonable ground for suspecting an enemy destination are placed in the prize court, while articles as to the destination of which there appears to be doubt are detained pending further investigation.

21. If, however, this were all that could be done, there is little doubt that it would be impossible to effect a complete cutting off of the enemy's supplies. For instance, there are many cases in which it would be difficult to establish in the prize court our right to stop goods, although they or their products, perhaps after passing through several hands, would in all probability ultimately reach the enemy. To indicate more plainly the nature of these difficulties would obviously be to assist the enemy and the neutral traders who desire to supply him; but the difficulties exist, and, in order to meet them, it has been necessary to adopt other means by which neutral may be more easily distinguished from enemy trade, and the blockade of Germany made more effective than it would be if we relied solely on the right to stop goods which could be proved to be intended for the enemy.

V. Guarantees by Importers

22. Importers in neutral countries adjacent to Germany have found that the exercise of our belligerent rights to some extent impedes the importation of articles which they genuinely need for the requirements of their own country, and consequently they have in many cases shown willingness to make agreements with this country which on the one hand secure their receiving the supplies which they need, while on the other guaranteeing to us that goods allowed to pass under the terms of the agreement will not reach the enemy. The neutral governments themselves have as a rule considered it inadvisable to make agreements on such points with His Majesty's Government; they have on the whole confined their action to prohibiting the export of certain articles which it was necessary for them to import from abroad. Inasmuch, however, as in most cases they reserved the right to grant exemptions from such prohibitions, and as trade between the Scandinavian countries themselves was usually excluded from the scope of such measures, the mere fact of the existence of such prohibitions could not be considered a sufficient safeguard that commodities entering the country would not ultimately reach Germany.

23. In some neutral countries, however, agreements have been made by representative associations of merchants, the basis of which is that the associations guarantee that articles consigned to or guaranteed by them, and their products, will not reach the enemy in any form, while His Majesty's Government undertake not to interfere with shipments consigned to the association, subject to their right to institute prize proceedings in exceptional cases where there is evidence that an attempt has been made to perpetrate a fraud upon the association, and to pass the goods ultimately through to Germany. The first of these agreements was made with the Netherlands Oversea Trust, and similar agreements, either general or dealing with particular commodities of special importance, such as rubber and cotton, have been made with bodies of merchants in Sweden, Norway, Denmark, and Switzerland. The details of these agreements it is impossible to give more fully, but the general principle is that the associations, before allowing goods to be consigned to them, require the would-be receivers to satisfy them, by undertakings backed by sufficient pecuniary penalties, that the goods will not leave the country, either in their original shape or after any process of manufacture, and notwithstanding any sales of which they may be the subject.

In some cases these agreements provide that the associations shall themselves be bound to detain or return goods believed by His Majesty's Government to be destined for the enemy; so that it does not follow that cargoes allowed to proceed to a neutral port will necessarily be delivered to the consignees.

24. The existence of such agreements is of great value in connection with the right of seizure, because the fact of articles not being consigned to or guaranteed by the association, or being consigned to it without the necessary consent, at once raises the presumption that they are destined for the enemy.

VI. Agreements with Shipping Lines

25. Delays caused by the elaborate exercise of the belligerent right of visit and search are very irksome to shipping; and many shipping lines who carry on regular services with Scandinavia and Holland have found it well worth their while to make agreements with His Majesty's Government under which they engage to meet our requirements with regard to goods carried by them, in return for an undertaking that their ships will be delayed for as short a time as possible for examination in

British ports. Several agreements of this kind have been made: the general principle of them is that His Majesty's Government obtain the right to require any goods carried by the line, if not discharged in the British port of examination, to be either returned to this country for prize court proceedings, or stored in the country of destination until the end of the war, or only handed to the consignees under stringent guarantees that they or their products will not reach the enemy. The companies obtain the necessary power to comply with these conditions by means of a special clause inserted in all their bills of lading, and the course selected by the British authorities is determined by the nature of the goods and the circumstances of the case. In addition to this, some of these companies make a practice, before accepting consignments of certain goods, of enquiring whether their carriage is likely to lead to difficulties, and of refusing to carry them in cases where it is intimated that such would be the case. The control which His Majesty's Government are in a position to exercise under these agreements over goods carried on the lines in question is of very great value.

VII. Bunker Coal

26. Much use has been made recently of the power which the British Government are in a position to exercise owing to their ability to refuse bunker coal to neutral ships in ports in the British Empire. Bunker coal is now only supplied to neutral vessels whose owners are willing to comply with certain conditions which ensure that no vessels owned, chartered, or controlled by them trade with any port in an enemy country, or carry any cargo which proceeds from, or is destined for, an enemy country. The number of owners who accept these conditions increases almost daily. The use of this weapon has already induced several shipping lines which before the war maintained regular services between Scandinavian and German Baltic ports, to abandon their services.

VIII. Agreements in respect of Particular Commodities

27. Special agreements have been made in respect of particular articles the supply of which is mainly derived from the British Empire or over which the British Government are in a position to exercise control. The articles covered by such agreements, the object of which is to secure such control over the supply of these materials as will ensure that they

or their products will not reach the enemy, are rubber, copper, wool, hides, oil, tin, plumbago, and certain other metals.

IX. Rationing

28. Though the safeguards already described do much to stop entirely all trade to and from Germany, yet, in spite of all of them, goods may and do reach our enemies, and, on the other hand, considerable inconvenience is caused to genuinely neutral trade. It is to avoid both evils that His Majesty's Government have for months past advocated what is called rationing, as by far the soundest system both for neutrals and belligerents. It is an arrangement by which the import of any given article into a neutral country is limited to the amount of its true domestic requirements. The best way of carrying this arrangement into effect is probably by agreement with some body representing either one particular trade or the whole commerce of the country. Without such an agreement there is always a risk that, in spite of all precautions, the whole rationed amount of imports may be secured by traders who are really German agents. These imports might go straight on to Germany, and there would then be great practical difficulty in dealing with the next imports destined, it may be, for genuine neutral traders. If they were to be stopped, there would be great complaint of injustice to neutrals, and yet unless that be done the system would break down. Accordingly, agreements of this kind have been concluded in various countries, and His Majesty's Government are not without hope that they may be considerably extended in the future. Even so the security is not perfect. An importer may always let his own countrymen go short and re-export to Germany. The temptation to do so is great, and as our blockade forces prices up is increasing. But the amount that gets through in this way cannot be large, and the system is in its working so simple that it minimizes the delays and other inconveniences to neutral commerce inseparable from war. Of the details of these arrangements it is impossible to speak. But their principle appears to offer the most hopeful solution of the complicated problems arising from the necessity of exercising our blockade through neutral countries.

X. Results.

29. As to the results of the policy described in this memorandum the full facts are not available. But some things are clear. It has already

been shown that the export trade of Germany has been substantially destroyed. With regard to imports, it is believed that some of the most important, such as cotton, wool, and rubber, have for many months been excluded from Germany. Others, like fats and oils and dairy produce, can only be obtained there, if at all, at famine prices. All accounts, public and private, which reach His Majesty's Government agree in stating that there is considerable discontent amongst sections of the German population, and there appear to have been food riots in some of the larger towns. That our blockade prevents any commodities from reaching Germany is not, and under the geographical circumstances cannot be true. But it is already successful to a degree which good judges both here and in Germany thought absolutely impossible, and its efficiency is growing day by day. It is right to add that these results have been obtained without any serious friction with any neutral government. There are obvious objections to dwelling on the importance to us of the good will of neutral nations; but anyone who considers the geographical, military, and commercial situation of the various countries will certainly not underrate the value of this consideration. There is great danger when dealing with international questions in concentrating attention exclusively on one point in them, even if that point be as vital as is undoubtedly the blockade of Germany.

XI. Conclusion

- 30. To sum up, the policy which has been adopted in order to enforce the blockade of Germany may be described as follows:
 - (i) German exports to oversea countries have been almost entirely stopped. Such exceptions as have been made are in cases where a refusal to allow the export of the goods would hurt the neutral concerned without inflicting any injury upon Germany.
 - (ii) All shipments to neutral countries adjacent to Germany are carefully scrutinized with a view to the detection of a concealed enemy destination. Wherever there is reasonable ground for suspecting such destination, the goods are placed in the prize court. Doubtful consignments are detained until satisfactory guarantees are produced.
 - (iii) Under agreements in force with bodies of representative merchants in several neutral countries adjacent to Germany, stringent guarantees are exacted from importers, and so far as possible all trade between the neutral country and Germany, whether arising overseas or in the neutral country itself, is restricted.

- (iv) By agreements with shipping lines and by a vigorous use of the power to refuse bunker coal, a large proportion of the neutral mercantile marine which carries on trade with Scandinavia and Holland has been induced to agree to conditions designed to prevent goods carried in these ships from reaching the enemy.
- (v) Every effort is being made to introduce a system of rationing which will ensure that the neutral countries concerned only import such quantities of the articles specified as are normally imported for their own consumption.

ARRANGEMENT BETWEEN THE UNITED KINGDOM AND HONDURAS REFERRING TO ARBITRATION MATTERS RELATING TO THE MASICA INCIDENT $^{\mathrm{1}}$

Signed at Tegucigalpa, April 4, 1914

TERMS OF REFERENCE

Whereas on the 16th June, 1910, an affray took place in the village of La Masica, in the Department of Atlantida, Republic of Honduras, between a squad of soldiers of the Government of Honduras which at the moment of the affray was under the command of the Mayor de Plaza of that Department, Don Joaquín Medina Planas, and a party of three British West Indian subjects, named Alexander Thurston, Wilfred Robinson, and Joseph Holland, which affray resulted in the death of Alexander Thurston, the wounding of Wilfred Robinson, and the beating of Joseph Holland;

And whereas a court of enquiry opened at La Ceiba on the 29th August, 1910, made investigations into the circumstances attending the above-mentioned incident and pronounced a decision thereupon:

And whereas in view of the result of these investigations and the decision referred to, the Government of Honduras, basing themselves on the agreement concluded at Tegucigalpa on the 13th August, 1910,² between the Honduranean Minister for Foreign Affairs, Don R. Rivera Retes, and his Britannic Majesty's Chargé d'Affaires, Mr. Godfrey Haggard, have refused to accept any responsibility in regard to the event mentioned;

And whereas the Government of Great Britain consider that the re-

¹ Great Britain, Treaty Series, 1914, No. 10.

² See Annex, p. 101.

sults of these investigations and the decision of the court give them good ground for claiming from the Government of Honduras a reasonable indemnity;

And whereas both governments, being desirous of removing as soon as possible this source of disagreement between them, have resolved to submit the above question to the arbitral decision of His Majesty the King of Spain;

Now therefore they have authorized duly and properly their representatives, namely:

The Government of His Britannic Majesty: Charles Alban Young, Esquire, Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty to Honduras; and

The Government of Honduras: his Excellency Señor Dr. Don Mariano Vásquez, their Minister for Foreign Affairs, to conclude the following arrangement:

Ι

The question whether, under the principles established by international law, and taking into consideration the agreement of the 13th August, 1910, above referred to, any responsibility attaches to the Government of Honduras in respect of the affray and the injuries inflicted on the above-mentioned British subjects in the circumstances as disclosed before the said court of enquiry at La Ceiba, shall be submitted to the decision of His Majesty the King of Spain.

II

Within four months of the signature of this arrangement, the Government of His Britannic Majesty shall present to the Royal Arbitrator and to the Government of Honduras a memorial in support of their ease. The presentation of the British memorial to the Government of Honduras shall be effected by its presentation to the Honduranean Minister in Guatemala by His Britannic Majesty's Representative in Guatemala.

III

Within four months of the presentation of the British memorial to the Government of Honduras, that government shall present to the Royal Arbitrator and to the Government of His Britannic Majesty an answer. The presentation of the answer to the Government of His Britannic Majesty's shall be effected by its presentation to His Britannic Majesty's

Representative in Guatemala by the Honduranean Minister in Guatemala.

TV

Within four months of the presentation of the answer of Honduras, the Government of His Britannic Majesty may, if they think it necessary, present to the Royal Arbitrator and to the Government of Honduras a reply to the answer. Such reply shall be presented to the Government of Honduras in the same manner as the British memorial.

V

The memorial and the reply shall be in the English language, accompanied by a translation into Spanish. The answer shall be in Spanish, accompanied by a translation into English. These pleadings shall all be printed. They shall be accompanied by such documents and proofs as may be considered necessary by the government presenting them, but neither government shall be entitled to put in any further evidence as to the events which occurred on the 16th June, 1910, beyond that which was given before, or taken into consideration by, the above-mentioned court of enquiry at La Ceiba.

\mathbf{v} I

In matters not provided for in the present arrangement, the proceedings shall be regulated by such of the provisions of the Convention for the Pacific Settlement of International Disputes signed at The Hague the 18th October, 1907, as the Royal Arbitrator may consider to be applicable.

VII

If the award of the Royal Arbitrator is in favor of Great Britain, the award shall specify the amount of the pecuniary indemnity to be paid by the Government of Honduras to the Government of His Britannic Majesty. Such indemnity shall be paid by the Government of Honduras within three months dating from the notification to them of the award of the Royal Arbitrator.

VIII

Each party shall bear its own expenses and a moiety of the common expenses of the arbitration.

In witness whereof the aforesaid representatives of the Governments of Great Britain and Honduras have signed in triplicate the present arrangement, and have affixed thereto their seals, in the city of Tegucigalpa, this fourth day of April, one thousand nine hundred and fourteen.

(L. S.) CHARLES ALBAN YOUNG, (L. S.) MARIANO VÁSQUEZ.

ANNEX

AGREEMENT FOR THE ARRANGEMENT OF THE MASICA INCIDENT

T

The Government of Honduras engages within three days to remove from his post the Mayor de Plaza of the Department of Atlantida, Don Joaquín Medina, pending the course of the judicial inquiry. His trial is to be commenced with all the urgency which the case demands, and shall take place under the following conditions:

- (a) As a guarantee of impartiality, the substitution of the present Judge of Letters of the Department of Atlantida will be proposed to the Supreme Court of Justice; the Licentiate Don Serapio Hernandez y Hernandez, who is acceptable to both parties, shall be appointed in his stead.
- (b) In order still further to avoid any suspicion of partiality during the trial, the Governor and Commandant of the Department shall temporarily leave his post: he shall have absented himself within eight days from the date of this agreement, and shall remain away during the course of the summary proceedings.
- (c) The British Consul at Puerto Cortes, or failing him, some other person especially named by the British Legation, shall be present at the judicial sittings of the court at La Ceiba.

II

In the event of the Mayor de Plaza being found guilty, the Government of Honduras will grant a proper indemnity to the family of the late Thurston, as also to the wounded man Robinson. The amounts

payable in this respect shall be agreed upon later with the English Legation.

GODFREY HAGGARD, His Britannic Majesty's Chargé d'Affaires.

(L. S.)

R. RIVERA RETES.

TEGUCIGALPA, August 13, 1910.

TREATY OF COMMERCE AND NAVIGATION BETWEEN THE UNITED KINGDOM and Honduras $^{\mathrm{1}}$

Signed at Guatemala, May 5, 1910; ratifications exchanged at Guatemala, June 21, 1915

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Excellency the President of the Republic of Honduras, being desirous of further facilitating and extending the commercial relations already existing between their respective countries, have determined to conclude a treaty of commerce and navigation with this object, and have appointed as their plenipotentiaries, that is to say:

His Majesty the King of the United Kingdom of Great Britain and Ireland, Lionel Edward Gresley Carden, Esquire, His Majesty's Minister Resident and Consul-General in Central America; and

His Excellency the President of the Republic of Honduras, Doctor Manuel Francisco Barahona, Honduranean Chargé d'Affaires, in Guatemala;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I

There shall be between the territories of the two contracting parties reciprocal freedom of commerce and navigation.

The subjects or citizens of each of the two contracting parties shall

¹ Great Britain, Treaty Series, 1915, No. 7.

have liberty freely to come, with their ships and cargoes, to all places and ports in the territories of the other, to which native subjects or citizens are, or may be permitted to come, and shall enjoy the same rights, privileges, liberties, favors, immunities and exemptions in matters of commerce and navigation as are or may be enjoyed by native subjects or citizens.

The subjects or citizens of each of the contracting parties shall not be subject in respect of their persons or property, or in respect of their commerce or industry, to any taxes, whether general or local, or to imposts or obligations of any kind whatever, other or greater than those which are or may be imposed upon native subjects or citizens or subjects or citizens of the most favored nation.

ARTICLE II

The contracting parties agree that in all matters relating to commerce, navigation, and industry, any privilege, favor, or immunity which either contracting party has actually granted or may hereafter grant to the subjects or citizens of any other foreign state, shall be extended immediately and unconditionally to the subjects or citizens of the other, it being their intention that the commerce, navigation, and industry of each country shall be placed in all respects on the footing of the most favored nation.

ARTICLE III

The subjects or citizens of each of the contracting parties in the territories of the other shall be at full liberty to acquire and possess every description of property, movable and immovable, which the laws of the country permit, or shall permit the subjects or citizens of any other foreign country to acquire and possess. They may dispose of the same by sale, exchange, gift, marriage, testament, or in any other manner or acquire the same by inheritance, under the same conditions which are or shall be established with regard to native subjects or citizens. They shall not be subjected in any of the cases mentioned to any taxes, imposts or charges of whatever denomination other or higher than those which are or shall be applicable to native subjects or citizens.

The subjects or citizens of each of the contracting parties, shall also be permitted, on compliance with the laws of the country, freely to export the proceeds of the sale of their property and their goods in general without being subjected, as foreigners, to other or higher duties than those to which subjects or citizens of the country would be liable under similar circumstances.

ARTICLE, IV

The subjects or citizens of each of the contracting parties:

- 1. Shall have full liberty with their families to enter, leave, travel, or reside in any part of the territories of the other contracting party.
- 2. They shall be exempted from all compulsory military service whatever, whether in the army, navy, national guard or militia.
- 3. They shall be equally exempted from all judicial functions whatever, other than those imposed by the laws relating to juries, as well as from all extraordinary war contributions, forced loans, and every species of military requisitions or service.
- 4. In all other matters affecting their persons or property, any privilege, favor or immunity which either contracting party has actually granted, or may hereafter grant to the subjects or citizens of any other foreign state, shall be extended immediately and unconditionally to the subjects or citizens of the other.

ARTICLE V

The dwellings, manufactories, warehouses and shops of the subjects or citizens of each of the contracting parties in the territories of the other and all premises appertaining thereto destined for purposes of residence or commerce, shall be respected.

It shall not be allowed to make a search of, or a domiciliary visit to such dwellings and premises or to examine or inspect books, papers or accounts, except under the conditions and with the forms prescribed by the laws for subjects or citizens of the country or of the most favored nation.

The subjects or citizens of each of the two contracting parties in the territories of the other shall have free access to the courts of justice for the prosecution and defence of their rights without other conditions, réstrictions, or taxes beyond those imposed on native subjects or citizens.

ARTICLE VI

The articles, the produce or manufacture of one of the contracting parties, imported into the territories of the other, from whatever place arriving, shall not be subjected to other or higher duties or charges than those paid on the like articles, the produce or manufacture of any other foreign country. Nor shall any prohibition or restriction be maintained or imposed on the importation of any article, the produce or manufacture of either of the contracting parties into the territories of the other, from whatever place arriving, which shall not equally extend to the importation of the like articles being the produce or manufacture of any other foreign country.

The only exceptions to this general rule shall be in the case of sanitary or other prohibitions occasioned by the necessity of securing the safety of persons, or of cattle, or of plants useful to agriculture and of the measures applicable in either of the two countries to articles enjoying a direct or indirect bounty in the other.

ARTICLE VII

The articles, the produce or manufacture of one of the contracting parties, exported to the territories of the other, shall not be subjected to other or higher charges than those paid for the like articles exported to another foreign country. Nor shall any prohibition be imposed on the exportation of any article from the territories of either of the two contracting parties to the territories of the other which shall not equally extend to the exportation of the like article to any other foreign country.

ARTICLE VIII

Merchandise of all kinds, the produce or manufacture of one of the contracting parties, passing in transit through the territories of the other, shall be reciprocally free from all transit duties, whether they pass direct, or whether during transit they are unloaded, warehoused and reloaded. But if the goods remain for more than three days in the bonded warehouses of one of the contracting parties, they shall be liable to the payment of the usual warehousing charges, which shall, in no case, exceed the charges payable by subjects or citizens of the country in which the warehouse is situated. Similarly, subjects or citizens of each of the contracting parties shall enjoy the same treatment in regard to warehousing accommodation as is accorded to national subjects or citizens.

ARTICLE IX

The stipulations of the present treaty, with regard to the mutual accord of the treatment of the most favored nation, apply uncondition-

ally to the treatment of commercial travellers and their samples. The chambers of commerce, as well as such other trade associations and other recognized commercial associations in the contracting states as may be authorized in this behalf, shall be mutually accepted as competent authorities for issuing any certificates that may be required for commercial travellers.

ARTICLE X

No internal duties levied for the benefit of the state, local authorities, or corporations which affect, or may affect the production, manufacture, or consumption of any article in the territories of either of the contracting parties shall for any reason be a higher or more burdensome charge on articles the produce or manufacture of the other than on similar articles of native origin.

The produce or manufacture of either of the contracting parties imported into the territories of the other, and intended for warehousing or transit, shall not be subjected to any internal duty, unless they are placed on the market for consumption, the only charge leviable on them being that for warehousing.

ARTICLE XI

Each of the contracting parties shall permit the importation or exportation on the vessels of the other of all merchandise which may be legally imported or exported; and such vessels and their cargoes shall enjoy the same privileges and shall not be subjected to any other or higher duties or charges than national vessels and their cargoes.

ARTICLE XII

The provisions of this treaty relating to the mutual concession of national treatment in matters of navigation do not apply to the coasting trade, in respect of which the subjects or citizens and vessels of the contracting parties shall enjoy most-favored-nation treatment.

British and Honduranean vessels may, nevertheless, proceed from one port to another, either for the purpose of discharging the whole or part of their cargoes brought from abroad, or of taking on board the whole or part of their cargoes for a foreign destination.

ARTICLE XIII

In all that regards the stationing, loading and unloading of vessels in the ports, docks, roadsteads and harbors of the territories of the con-

tracting parties, no privilege shall be granted to national vessels which shall not be equally granted to vessels of the other country; the intention of the contracting parties being that, in this respect also, their vessels shall be treated on the footing of perfect equality, the two governments, however, reserving the right to grant special privileges to their national vessels when engaged in rendering mail or other government service.

ARTICLE XIV

No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other analogous duties of whatever nature or under whatever denomination, levied in the name or for the profit of the government, private individuals, corporations, or establishments of any kind, shall be imposed in the ports of the territories of either of the contracting parties upon the vessels of the other country which shall not equally and under the same conditions be imposed in the like cases on national vessels in general. Such equality of treatment shall apply to the respective vessels from whatever port or place they may arrive and whatever may be their destination.

ARTICLE XV

Any vessel of either of the contracting parties which may be compelled, by stress of weather or by accident, to take shelter in a port of the other, shall be at liberty to refit therein, to procure all necessary stores and to put to sea again, without paying any dues other than such as would be payable in a similar case by a national vessel. In case, however, the master of a merchant vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses he shall be bound to conform to the regulations and tariffs of the place to which he may have come.

If any vessel of one of the contracting parties should run aground or be wrecked upon the coasts of the other, such vessel and all parts thereof and all furniture and appurtenances belonging thereunto, and all goods and merchandise saved therefrom, including any which may have been cast into the sea, or the proceeds thereof, if sold, as well as all papers found on board such stranded or wrecked vessel shall be given up to the owners or their agents when claimed by them. If there are no such owners or agents on the spot, then the same shall be delivered to the British or Honduranean consular officer in whose district the wreck or stranding may have taken place, upon being claimed by him within the period

fixed by the laws of the country, and such consular officers, owners or agents shall pay only the expenses incurred in the preservation of the property, together with the salvage or other expenses which would have been payable in the like case of a wreck of a national vessel.

The contracting parties agree, moreover, that merchandise saved shall not be subjected to the payment of any customs duty unless cleared for internal consumption.

In the case either of a vessel being driven in by stress of weather, run aground, or wrecked, the respective consular officers shall, if the owner or master or other agent of the owner is not present or is present, and requires it, be authorized to interpose in order to afford the necessary assistance to their fellow-countrymen.

ARTICLE XVI

All vessels which, according to British law, are to be deemed British vessels, and all vessels which, according to Honduranean law, are to be deemed Honduranean vessels, shall, for the purposes of this treaty, be deemed British or Honduranean vessels, respectively.

ARTICLE XVII

It shall be free to each of the high contracting parties to appoint consuls-general, consuls, vice-consuls, and consular agents to reside in the towns and ports of the dominions and possessions of the other. Such consuls-general, consuls, vice-consuls, and consular agents however, shall not enter upon their functions until after they shall have been approved and admitted in the usual form by the government to which they are sent. They shall enjoy all the facilities, privileges, exemptions and immunities of every kind which are or shall be granted to consuls of the most favored nation.

ARTICLE XVIII

The consuls and consular agents of each of the contracting parties, residing in the territories of the other, shall receive from the local authorities such assistance as can by law be given to them for the recovery of deserters from the vessels of their respective countries.

Provided that this stipulation shall not apply to subjects or citizens of the state in whose territory the desertion takes place.

ARTICLE XIX

The subjects or citizens of each of the contracting parties shall have, in the territories of the other, the same rights as native subjects or citizens in regard to patents for inventions, trade-marks, and designs, upon the fulfilment of the formalities prescribed by law.

ARTICLE XX

All goods bearing marks or descriptions which state or manifestly suggest that the goods are the produce or manufacture of one of the contracting states shall, if such statement or suggestion be false, be seized on importation into either of the two states. The seizure may also be effected in the state where the false indication of origin has been applied, or in that into which the goods bearing the false indication may have been imported.

The seizure shall be effected either at the request of the proper government department or of an interested party whether an individual or a society in conformity with the domestic legislation of each state, but the authorities are not bound to effect the seizure of goods in transit.

The tribunals of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of the present article.

ARTICLE XXI

Any controversies which may arise respecting the interpretation or the execution of the present treaty or the consequence of any violation thereof, shall be submitted, when the means of settling them directly by amicable agreement are exhausted, to the decision of commissions of arbitration, and the result of such arbitration shall be binding upon both governments.

The members of such commissions shall be selected by the two governments by common consent, failing which, each of the two parties shall nominate an arbitrator, or an equal number of arbitrators, and the arbitrators thus appointed shall select an umpire.

The procedure of the arbitration shall in each case be determined by the two contracting parties, failing which the commission of arbitration shall be itself entitled to determine it beforehand.

ARTICLE XXII

The stipulations of the present treaty shall not be applicable to any of his Britannic Majesty's colonies, possessions or protectorates beyond the seas, unless notice of adhesion shall have been given on behalf of any such colony, possession, or protectorate by His Britannic Majesty's representative in Central America, before the expiration of one year from the date of the exchange of the ratifications of the present treaty.

Nevertheless, the goods produced or manufactured in any of His Britannic Majesty's colonies, possessions, and Protectorates, shall enjoy in Honduras complete and unconditional most-favored-nation treatment, so long as such colony, possession or protectorate shall accord to goods the produce or manufacture of Honduras treatment as favorable as it gives to the produce or manufacture of any other foreign country.

ARTICLE XXIII

The stipulations contained in this treaty providing for the mutual accord of the treatment of the most favored nation shall not be held to be applicable to the special concessions which Honduras may have accorded or may in future accord to other Central American Republics.

ARTICLE XXIV

The present treaty shall be ratified and the ratifications shall be exchanged at Guatemala as soon as possible. It shall come into force immediately upon ratification and shall be binding during ten years from the day of its coming into force. In case neither of the contracting parties shall have given notice to the other, twelve months before the expiration of the said period of ten years, of the intention to terminate the present treaty it shall remain in force until the expiration of one year from the day on which either of the contracting parties shall have denounced it.

As regards, however, the British Colonies, possessions, and protectorates which may have adhered to the present treaty, in virtue of Article XXII, either of the contracting parties shall have the right to terminate it, separately, at any time, on giving twelve months' notice to that effect.

It is understood that the stipulations of the present article and of Article XXII, referring to British colonies, possessions or protectorates, apply, also, to the Island of Cyprus.

In witness whereof, the respective plenipotentiaries have signed the present treaty and have affixed thereto their seals.

Done in two originals at the city of Guatemala, the fifth day of May one thousand nine hundred and ten.

(L. S.) LIONEL CARDEN.

(L. S.) MANUEL F. BARAHONA.

ITALIAN DECREES RELATIVE TO ENEMY MERCHANT VESSELS, TOGETHER WITH THE ITALIAN NAVAL PRIZE REGULATIONS $^{\mathrm{1}}$

No. 1

Royal Decree of May 30, 1915 (No. 814)

[Translation.]

Thomas of Savoy, Duke of Genoa, Lieutenant-General of His Majesty Victor Emanuel III, by the grace of God and the will of the Nation, King of Italy

In virtue of the authority delegated to us;

Whereas the Royal Decree of the 16th May, 1915, No. 659 suspends the application of Article 211 and 243 of the Mercantile Marine Code in the event of the participation of Italy in the present international conflict;

Having regard to the VIth and the XIth Convention signed at The Hague on the 18th October, 1907, which Italy declares she will observe so far as the laws in force in the kingdom and the other measures taken by the Government of the King permit;

Whereas a state of war exists;

In virtue of the extraordinary powers conferred on the Government of the King by the law of the 22nd May, 1915, No. 671.

The Council of Ministers having been consulted;

On the motion of the Minister of Marine, acting in concert with the Ministers for Foreign Affairs, of the Colonies and of Finance;

¹ British Parliamentary Papers, Miscellaneous, No. 18 (1915). [Cd. 8104.]

We have decreed and decree:

- Article 1. All enemy merchant ships lying in the ports and territorial waters of the kingdom and of its colonies at the outbreak of hostilities shall be sequestered by the local naval authorities.
- Art. 2. Special technical commissions assisted by the naval authorities shall visit enemy merchant ships thus sequestered with the object of ascertaining which among them are so constructed or built, or contain such internal arrangements or fittings, as may justify the assumption that they are intended to be converted eventually into warships.
- Art. 3. In all cases in which it shall be found that vessels were intended for conversion into warships, these vessels shall be captured and placed under the jurisdiction of the Prize Court for a decision as to their ultimate disposal.
- Art. 4. The vessels which shall not be found to have been intended for conversion into warships shall remain under sequestration. They may be requisitioned by the Minister of Marine for the whole duration of the present war, in accordance with rules to be laid down in another decree.
- Art. 5. Enemy goods found on board all merchant vessels referred to in Article 1 above mentioned shall be sequestered and restored after the war without an indemnity, or else requisitioned with an indemnity.

Perishable goods shall be sold on special conditions which shall be laid down by our Ministry of Marine.

- Art. 6. Neutral goods found on board any merchant ship referred to under Article 1 shall be released subject to an option of requisitioning them with an indemnity which the Government of the King may exercise.
- Art. 7. The decision as to the nationality of the goods referred to under the preceding Articles 5 and 6, and the consequent verdict as to the release or sequestration of these goods shall lie with the Prize Court.
- Art. 8. The regulations laid down in Articles 5 and 6 of the XIth Hague Convention of the 18th October, 1907, shall be applicable to the members of the crews on enemy merchant vessels referred to in the preceding Article 1.
- Art. 9. The treatment laid down in the preceding articles shall not be extended to enemy merchant ships which shall carry out or attempt to carry out any acts of hostility whether direct or indirect.
- Art. 10. The rules laid down in the preceding articles are also applicable to those enemy merchant ships which shall have left their last

port before the declaration of war, and which are met at sea before they are aware of the commencement of hostilities.

Art. 11. The Minister of Marine is empowered to issue special rules ² for the publication of the present decree which comes into force to-day.

We order that the present decree, furnished with the seal of state, be included in the official record of the laws and decrees of the Kingdom of Italy, requiring everyone concerned to observe it and cause it to be observed.

Given at Rome this 30th day of May, 1915.

THOMAS OF SAVOY.

No. 2

ROYAL DECREE OF JUNE 17, 1915 (No. 957)

[Translation.]

[Special regulations for the application of the Decree of 30th May, 1915, No. 814, relating to the treatment of enemy merchant vessels in ports of the Kingdom or of the Colonies.]

Thomas of Savoy, Duke of Genoa, Lieutenant-General of His Majesty Victor Emanuel III, by the Grace of God and the will of the Nation, King of Italy:

In virtue of the authority delegated to us;

In view of the law of the 22nd May, 1915, No. 671, that confers extraordinary powers on the Government of the King;

In view of our decree dated the 30th May, 1915, No. 814, which lays down rules for the treatment of enemy merchant vessels lying in the ports of the kingdom and the colonies;

At the proposal of the Ministry of Marine, in concert with the Ministries for Foreign Affairs and the colonies;

We have decreed and do decree:

Article 1. Enemy merchant vessels present in the ports and territorial waters of the kingdom at the outbreak of hostilities, and seques-

1

trated by the local maritime authorities in accordance with Article 1 of our decree of the 30th May, 1915,³ No. 814, are inscribed on a provisional register at the Maritime Department of Genoa, and are authorized to use the national flag and to navigate conformably to the regulations established in the following articles.

- Art. 2. Vessels captured in virtue of Article 3 of our decree of the 30th May, 1915, No. 814, are placed at the disposal of the Ministry of Marine, who may arm and man them, and employ them in the service of the Royal Government pending the final judgment of the Prize Court.
- Art. 3. Vessels sequestrated in conformity with Article 4 of our decree of the 30th May, 1915, No. 814, may be requisitioned by the Ministry of Marine for the whole period of hostilities, either to be armed and manned by the Royal Navy, or to be handed over to the service of some other state administration or public body, or again to a navigation company acting under the authority of the above-mentioned Ministry.

The service of vessels indicated in the present article shall be regulated by the rules governing the national mercantile marine except when such vessels shall have been transformed into ships of war.

- Art. 4. A special commission formed by the Ministry of Marine, presided over by the Director-General of the Mercantile Marine, and composed of a superior naval officer, of a superior official of the central administration of the mercantile marine, and a captain of the port, will lay down the conditions under which the use of vessels referred to in Article 3 will be conceded to such administrations, corporations, or societies as may apply for them and may be duly authorized to employ them.
- Art. 5. The payment of a monthly rate for charter corresponding to the commercial interest on the real value of the vessel at the time of its requisition shall be included among the conditions attached to the chartering of the vessels in question.

The cost of any important or minor repairs that may be necessary to enable the ship to go to sea shall be deducted from the monthly rate referred to in the previous paragraph.

On the other hand, the charges of upkeep and all other expenses entailed by the running of the vessel shall be defrayed by the administrations, corporations, or societies who have taken it over.

Art. 6. The monthly rates to be paid for charter as conditioned by

the preceding article, and minus the deductions provided for in the same, shall be paid into a special and separate fund to the credit of the parties entitled thereto at the Caisse of Deposits for seamen in the Maritime Department of Genoa.

At the end of hostilities the fund will be liquidated in favor of those entitled, in accordance with our dispositions to follow.

We order that the present decree, furnished with the seal of state, be included in the official record of the laws and decrees of the Kingdom of Italy, requiring everyone concerned to observe it and cause it to be observed.

Given at Rome this 17th day of June, 1915.

THOMAS OF SAVOY.

No. 3

ROYAL DECREE OF JUNE 24, 1915 (No. 1014)

[Translation.]

Thomas of Savoy, Duke of Genoa, Lieutenant-General of His Majesty Victor Emanuel III, by the Grace of God and the will of the Nation, King of Italy:

In virtue of the authority delegated to us;

Whereas the Royal Decree of the 16th May, No. 659, suspends the application of Article 243 of the Mercantile Marine Code during the present international conflict:

Whereas our decree of the 30th May, 1915, No. 814, in substitution of Article 243 of the Mercantile Marine Code, lays down rules for the treatment of enemy merchant vessels in the territorial waters of the kingdom and of the colonies, on the outbreak of hostilities;

Whereas our decree of the 17th June, 1915, No. 957, in pursuance of the above-mentioned decree of the 30th May, 1915, No. 814, lays down rules for the use of enemy merchant vessels sequestrated in the ports of the kingdom and of the colonies;

Having regard to Article 244 of the Mercantile Marine Code; 4

⁴ Article 244 is as follows: (Translation.) "Vessels sequestrated as indicated above and merchandise loaded on the same which are of enemy property may,

In virtue of the extraordinary powers conferred on the Government of the King by the law of the 22nd May, 1915, No. 671;

The Council of Ministers having been consulted;

On the motion of the Minister of Marine, acting in concert with the President of the Council of Ministers, the Minister of the Interior, and with the Ministers for Foreign Affairs, of the Colonies, and of Grace and Justice, and Worship;

We have decreed and decree:

Article 1. If the enemy causes damage to the lives or goods of Italian subjects or citizens by bombarding undefended towns, ports, villages, houses, or other buildings, by destroying unarmed merchantmen, or by committing any hostile acts which are contrary to the principles of the rights of war generally recognized and admitted—The Government of the King are authorized to order the appropriation of the sum required to indemnify Italian subjects or citizens, or their representatives, who have suffered damage from the enemy, from the fund which has been established by the Caisse of Deposits for seamen in the Maritime Department of Genoa in accordance with the terms of Article 6 of our decree of the 17th June, 1915, No. 957.

Art. 2. If the fund established in virtue of Article 6 of our decree of the 17th June, 1915, No. 957, shall not prove sufficient to indemnify those who have suffered damage in the sense indicated in the preceding Article 1, those enemy merchant ships in regard to which the provision of sequestration has been enacted in accordance with the terms of Article 4 of our decree of the 30th May, 1915, No. 814, may be declared good prize and confiscated.

Similar treatment may be accorded to such enemy goods as have been found on board all enemy merchant ships sequestrated in ports of the kingdom and of its colonies at the outbreak of hostilities, for which the provision of sequestration was established in Article 5 of our decree of the 30th May, 1915, No. 814.

Art. 3. Decisions as to the legitimacy of prizes which may be declared under the terms of the preceding Article 2, as well as the disposal of the according to circumstances, be detained until the conclusion of hostilities or else declared to be good prize.

"In that case the proceeds will go to indemnify, pro rata of the respective interests involved, Italian subjects who have suffered injury from the enemy, subject to the observance of the rules and procedure established above, both in regard to judgment as to the legitimacy of the prize and in the liquidation connected therewith."

sums obtained from their seizure, and the distribution of the fund mentioned in the preceding Article 1 will be taken by the Prize Court, which will be guided by the rules and procedure established in the Mercantile Marine Code, and by the regulations drawn up for the court itself.

- Art. 4. If the Prize Court ascertains that the sums composing the fund mentioned in Article 1, or the ships or goods declared to be good prize and confiscated in accordance with the terms of Article 2, belong to individuals of Italian nationality but natives of regions which are under the dominions of the Austro-Hungarian Empire, the Prize Court may suspend the acts of distribution of such sums or of the sums obtainable from the sale of such ships or goods, and inform the Government of the King of the facts ascertained; the Government of the King may then after the Council of Ministers has considered the matter proceed to liberate the sums, ships, and goods belonging to the above-mentioned individuals, or may invite the Prize Court to continue the action and procedure provided for in the preceding articles.
- Art. 5. Subsequent dispositions ⁵ will be issued establishing the mode of procedure for the application of Articles 1 and 2 of the present decree.

We order that the present decree, furnished with the seal of state, be included in the official record of the laws and decrees of the Kingdom of Italy, requiring everyone concerned to observe it and cause it to be observed. Given at Rome this 24th day of June, 1915.

THOMAS OF SAVOY.

No. 4

ITALIAN NAVAL PRIZE REGULATIONS

(Approved by decree of July 15, 1915)

[Translation]

- 1. In execution of the Royal decree of the 16th May, 1915, suspending the application of Article 211 of the Mercantile Marine Code during the present conflict, the capture of enemy merchant ships is authorized in every case, with the following exceptions:
 - (a) Sailing boats adapted exclusively to shoal-water fishing, or to

⁵ These have not yet been published.

short local services within 3 miles of the enemy coast, provided they do not exceed 5 tons displacement, nor violate special provisions issued by the military authorities concerning fishing and navigation.

(b) Ships exclusively employed for religious, scientific or philanthropic purposes, hospital ships fitted out by private persons or charitable societies expressly recognized as such by the Royal Government in accordance with special instructions issued to naval commanding officers.

Cargoes which are enemy property in boats specified under (a) are exempt from sequestration, provided they do not include contraband of war; cargoes which are enemy property are equally exempt on board ships specified under (b) when connected with the mission on which the ship is engaged.

Boats and ships included under (a) and (b) are, however, in every case subject to capture as well as their cargoes, being enemy property, when such ships and boats take any direct or indirect part in hostilities.

- 2. Merchant ships, under whatever flag they may be sailing, shall be subject to capture in accordance with the provisions of the following articles if—
 - (a) Guilty of violation of blockade;
 - (b) Transporting contraband of war;
 - (c) Lending assistance to the enemy;
 - (d) They forcibly resist or endeavor to avoid search;
- (e) They are without ship's papers, or have on board ship's papers or manifests which are either falsified, altered, or insufficient so as to give rise to suspicion that they are concealing their real nationality or the real description or destination of the cargo;
- (f) They are going to an enemy port, while on the ship's papers a neutral destination is indicated;
- (g) They have been transferred from an enemy to a neutral flag subsequent to the outbreak of war, or not more than 30 days before that date, or not more than 60 days when the deed of sale by which the transfer of flag was effected is not found on board.
- 3. A ship is liable to be captured for violation of blockade when it endeavors to enter or leave a blockaded zone without being furnished with a formal safe-conduct, or when, after having obtained a safe-conduct to enter or leave, it does not observe the rules laid down as to the route which it must follow while navigating in the blockaded zone or crossing the line of blockade.
 - 4. If a ship is shaping its course towards a blockaded zone in ignorance

of the existence of the blockade, she shall be notified of it by one of the blockading vessels, entry to that effect being made, if possible, in her log.

Ignorance of the existence of blockade is assumed when this has been declared after the ship left its last port of call.

5. Are considered as contraband of war the objects and materials included in the respective lists approved by decree.

Articles of absolute and conditional contraband are seized when their destination is territory belonging to or occupied by the enemy, or when consigned to the enemy's forces.

Both absolute and conditional contraband on board a ship proceeding to a neutral port is subject to seizure when the name of the consignee does not appear on the manifest, or when the ultimate consignee resides in territory belonging to or occupied by the enemy, or when the goods are consigned to agents of an enemy government, wherever established, or to third persons who are receivers of the goods on account of agents of an enemy government.

6. A ship carrying absolute or conditional contraband may be captured on the high sea or in belligerent territorial waters at any time during its voyage.

If, however, contraband articles form a small part of the cargo, naval commanding officers may at their discretion take over, and, if circumstances require it, destroy the contraband goods, and after noting the fact in the ship's log may allow the vessel to continue her voyage.

- 7. A ship shall be captured as guilty of giving assistance to the enemy if she—
 - (a) Has taken direct part in hostilities;
- (b) Has been entirely chartered by an enemy government, or has on board an agent of such government in control of the ship;
- (c) Is employed exclusively for the transport of troops, or for the transmission of news in the enemy's interest;
- (d) Is engaged in transporting enemy military detachments or persons who during the voyage may render or have lent direct assistance to the enemy's operations with the knowledge of the owner, charterer, or master;
- (e) Is navigating with the specific object of transporting individuals on their way to join the enemy's armed forces.
- 8. Persons belonging to or intending to join the enemy's armed forces found on board a neutral vessel may be made prisoners of war, even though the ship be not subject to capture.

- 9. To carry out the instructions contained in the preceding articles, naval commanding officers, whenever it is judged useful, shall proceed to visit merchant ships on the high sea or in belligerent waters, or may request them to proceed to the nearest port to undergo visit there.
- 10. Neutral vessels convoyed by a ship of war shall be exempt from visit provided that the commander of the convoy declares in writing the character and cargo of the convoyed vessels in such a manner as will enable all information to be available which could be obtained by exercising the right of visit. If the naval officers in command have reason to think that the good faith of the commanding officer of the escort has been imposed upon, they will communicate to him their suspicion, so that he may on his own account make the necessary verifications and issue a written report.
- 11. The vessels or goods captured shall be brought to the nearest port in the kingdom, colonies, or territory occupied by Italy, or, this being impossible, to a port of an allied nation or occupied by the latter, or in case of absolute necessity to a neutral port. The vessels and goods shall there be placed at the disposal of the maritime and consular authorities as the case requires, together with a report of what has been done, accompanied by the respective declarations and documents.
- 12. When observance of the provisions of the preceding article may endanger the safety of the ship effecting the capture, or may interfere with the success of operations of war in which she is engaged, naval commanding officers may destroy the prize after providing for the safety of the persons on board and the ship's papers and manifests and of anything else which may help in deciding the legitimacy of the capture. The destruction of a prize must be justified in a special proces-verbal.

By order of His Majesty's Lieutenant-General,

Ministry of Marine:

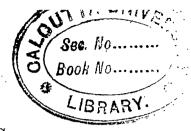
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OFFICIAL DOCUMENTS

REGULATIONS GOVERNING THE VISITS OF MEN-OF-WAR TO FOREIGN PORTS.¹

[Issued by the Office of Naval Intelligence, United Stated Navy Department, September, 1913; corrected to June 10, 1916.]

ARGENTINE REPUBLIC.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

AUSTRIA-HUNGARY.

Section. 1. Permission to anchor in the case of friendly foreign men-of-war and their stay in Austro-Hungarian waters is subject to the following paragraphs:

SEC. 2. In an Austrian or Hungarian port there must not be more than three ships flying the same flag.

¹ The following preface appears in the official print issued in September, 1913:

This compilation was undertaken with the view of furnishing in a compact form the various regulations, rules, and customs which govern the visits of men-of-war to foreign ports.

There are no general regulations established by international agreement on this subject, but many of the nations of the world have formulated laws, or regulations with the force of laws, which lay certain restrictions upon the visiting men-of-war of other nations.

It has been thought advisable to publish these decrees verbatim rather than present them in a condensed and perhaps obscure form.

It will be seen that in some cases the laws are applicable to all the ports of the nation, while in others they apply only to a restricted area of the littoral, or to certain ports.

Furthermore, some of the laws are applicable only during a certain period of time, as from sunset to sunrise.

Again, some of the laws or regulations are effective only in time of war, while the majority deal with times of peace.

It is intended to embody these regulations in the next edition of the Port Directory, issued by this office in 1911.

NAVY DEPARTMENT,

Office of Naval Intelligence, September, 1913. Along the whole length of the Austrian and Hungarian coasts there must not be contemporaneously staying more than six men-of-war flying the same flag.

This prescription may be departed from only in case of peril of the sea or by permission obtained by diplomatic means.

- SEC. 3. Along the coast within sight of signals, foreign men-of-war must fly their own flag.
- SEC. 4. On entering a port foreign men-of-war must abide by the orders given by the port authorities or their representatives.

The point of anchorage of foreign men-of-war is assigned by the local port authorities.

- Sec. 5. During their stay in port, as also in their communication with the shore, foreign men-of-war must abide by the port police regulations as well as those of the customs and health authorities and comply with their requests.
- SEC. 6. If on entering or leaving a port a pilot is obligatory on the part of a foreign man-of-war, the same must take on board the pilot sent by the authorities and follow his orders.

For the pilot's services no fee is paid by a foreign man-of-war and no responsibility as to its safety is assumed.

- SEC. 7. A man-of-war on entering a port is boarded by a port and a quarantine officer. The latter hands to the commander of the vessel the constituto form the blanks of which he has to fill in with his own hand. The officer will then inform the commander of the port police regulations.
- SEC. 8. The form of the constituto, which the commander of the manof-war has to fill in with his own hand, contains the following questions: Flag, specification of man-of-war, viz., if battleship, cruiser, gunboat, etc., name, number of crew, number of guns, name and rank of the commander, port of departure, duration of the voyage, probable duration of ship's stay, if and what passengers are on board, and the state of crew's health.

Of this constitute the political as well as the naval and military authorities have to be notified by the port office.

SEC. 9. Foreign men-of-war are forbidden to make topographic and hydrographic surveys of whatever description in Austrian and Hungarian waters, or to take soundings, to complete or rectify depths either from on board ship or ship's boats.

Target firing in territorial waters or on shore, as well as landing

maneuvers, can be made only by permission of the local territorial military headquarters.

Within the limits of territorial waters no capital executions are allowed.

SEC. 10. Excepting officers and petty officers who are allowed to wear their swords, the crew of a foreign man-of-war must not wear their arms on shore.

As a rule, an armed force is not allowed to land, but in case of a funeral service permission must be asked of the military authorities, or, if needed, also of the police authorities to land an armed escort.

SEC. 11. If a foreign man-of-war has to be docked or moored to the shore, every article of munition, including munition for torpedoes and mines and other explosive apparatus, must be landed on the spot assigned as per actual prescriptions.

Within the radius of the port the firing of guns or other arms, as also fireworks, is prohibited, except in firing a salute or signaling.

Sec. 12. In Austrian and Hungarian ports it is not permitted to foreign men-of-war to engage in actual hostilities with each other, and therefore any ship opening hostilities shall be treated as an enemy's ship.

It is likewise forbidden to stop in territorial waters and make perquisitions of ships or seize prize ships or commit any act tantamount to usurping the sovereignty of the state.

Sec. 13. With regard to the ship's boats plying to and from the shore, foreign men-of-war must follow the instructions of the port authorities and use only those places of landing as shall have been assigned.

Sec. 14. The following are declared ports of war:

- (1) The port of Pola, including the neighboring anchorage of Cape Molera, in the Straits of Quarnero, passing by Cape Promontore up to Punta Settentrionale of the Brioni Isles.
- (2) Golfo di Cattaro waters, within a line between Punta d'Ostro to Punta d'Orza.

SEC. 15. Foreign men-of-war may enter also an imperial royal port of war after due advice of their government and duly observing the foregoing prescriptions, but only in daytime, excepting in case of perils of the sea, and their stay cannot extend beyond a period of eight days. Permission to prolong their stay beyond this period can only be obtained by diplomatic means.

A commander of a fortress is bound to afford every possible assistance to foreign men-of-war.

SEC. 16. If a foreign man-of-war on nearing a fortified port within gunshot should not fly its flag, the nearest port shall fire a blank shot as a caution, and after two minutes another shot, this time with a loaded shot at the ship's prow, however, so as not to hit it, and if no heed is taken of this warning, within three minutes fire will be opened on the ship.

Sec. 17. Within gunshot of a fortified port foreign men-of-war must not engage in target firing nor use their searchlights.

SEC. 18. In war ports and the vicinity of sea-coast fortifications in general—that is to say, within a radius of 8 kilometers, equal to 5 miles, of a fortified port or coast fortification, reckoned from the projecting angles of the exterior forts—it is not allowed to draw plans and sketches, take photographs or other views of the ground or roads leading thereto.

SEC. 19. At Pola, foreign men-of-war may anchor only in the road-stead—that is to say, outside the line peninsula of St. Pietro and island of S. Andrea.

In the waters of Bocche di Cattaro men-of-war of friendly Powers may anchor only in the outer port of war—that is to say, up to the Strait of Cumbur—and the point of anchorage is assigned by the ship stationed there or by the military authorities of Castelnuovo.

SEC. 20. In the ports of war port police affairs are ruled by the naval or the military authorities. The sanitary affairs are left to the port captains under supervision of the maritime department.

Sec. 21. In time of war no ship or floating object can approach near a fortified port or a naval encampment of the Austrian or the Hungarian coasts without having previously received a special permission. Ships passing before fortified places must keep outside territorial waters.

Sec. 22. If a friendly Power's ships, in time of war, come near a fortified port or naval encampment with the intention of entering, it must hoist its international recognition signal and wait outside the territorial zone for permission to enter.

With regard to passing by or nearing the sea tract in front of the port of Pola, special prescriptions will be issued in time of war.

BELGIUM.

18 February, 1901.

ARTICLE 1. In time of peace war vessels belonging to foreign powers may enter freely Belgian harbors of the North Sea and anchor off said

harbors within territorial waters, provided that the number of such vessels flying the same flag, including those already within that zone, or in harbor, does not exceed three.

ART. 2. Foreign men-of-war may not enter the Belgian waters of the Scheldt, anchor in the roads of Antwerp, nor penetrate within the inland waters of the kingdom without first obtaining the authorization of the Minister of Foreign Affairs.

This authorization shall be asked through the medium of the sub-inspector of Belgian pilotage at Flushing.

ART. 3. Foreign men-of-war, unless specially authorized by the government, may not remain longer than two weeks in the Belgian territorial waters and harbors.

They are required to put to sea within six hours when requested to do so by the navy administration or the territorial military authorities, even should the time fixed for their stay have not expired.

- ART. 4. Should peculiar circumstances demand it, the government reserves the right to modify the above restrictions to the entrance or stay of foreign men-of-war in Belgian waters and harbors.
- ART. 5. The dispositions of Articles 1, 2, and 3, do not apply to menof-war whose admission has been authorized through diplomatic channels, nor to vessels on board of which happen to be either a chief of state, a prince of a reigning dynasty, or a diplomatic agent accredited near the King or government.
- ART. 6. Foreign men-of-war in Belgian waters are prohibited from making sketches or taking soundings, as well as from engaging in landing or firing exercises.

Members of the crew should be without arms while on shore. Commissioned and noncommissioned officers may carry the arms which form a part of their uniforms.

Boats plying in the harbors and territorial waters must not be armed.

Should funeral honors be given on shore, an exception to paragraph 2 of the present article may be authorized by the Minister of War on request of the territorial military authorities.

ART. 7. Captains of foreign men-of-war are required to observe the laws and regulations concerning the police, public health, taxes, and imposts, unless exceptions be established by particular convention or by international usages.

Admittance of Men-of-War of Belligerent Nations.

- ART. 8. Vessels belonging to the navy of a Power engaged in a maritime war are only admitted in the Belgian territorial waters and harbors for a stay of 24 hours. The same vessels will not be admitted twice within the space of three months.
- ART. 9. Access to the Belgian waters of the Scheldt is forbidden, except through special governmental authorization, to men-of-war of a Power engaged in maritime warfare. No pilot may be furnished to said men-of-war unless provided with such authorization.

In case the authorization has not been obtained through diplomatic channels, it must be requested through the medium of the subinspector of Belgian pilotage at Flushing, who shall transmit the decision to the commander of the vessel.

- ART. 10. Save in case of distress, serious injuries, or shortness of provisions and fuel, admittance into the Belgian territorial waters and harbors in the North Sea is forbidden to war vessels convoying prizes, and to privateers, whether convoying prizes or not.
- ART. 11. If men-of-war or privateers of a nation engaged in a maritime war are forced to take refuge in the Belgian waters or harbors of the North Sea owing to dangers of the sea, serious injuries, or lack of provisions or fuel, they shall leave as soon as the weather permits or else within the 24 hours following the authorized repairs or the shipment of the provisions shown to be necessary.
- ART. 12. The commander of any war vessel of a belligerent Power, immediately after his entrance into the territorial waters or harbors of Belgium in the North Sea, shall, at the request of the naval administration, be invited to furnish accurate information touching the flag, the name, the tonnage, the engine power, the crew of the vessel, her armament, the port of departure, the destination, as well as all other information necessary to determine if need be the repairs or supplies of provisions and coal that may be necessary.
- ART. 13. In no case shall vessels of war or privateers of a nation engaged in a maritime war be furnished with supplies or means of repairs in excess of what is indispensable to reach the nearest port of their country or of a nation allied to theirs in the war. The same vessel may not, unless specially authorized, be provided with coal a second time until the expiration of three months after a first coaling in a Belgian port.

ART. 14. The vessels specified in the preceding article may not, with the aid of supplies taken in Belgian territory, increase in any way their war material nor strengthen their crews, nor make enlistments, even among their own countrymen, nor execute under the pretext of repairs works of a nature to augment their military efficiency, nor land for the purpose of forwarding to their homes, by land routes, men, sailors or soldiers, happening to be on board.

ART. 15. They must abstain from any act intended to convert their place of refuge into a base of operations whatever against their enemies, and also from any investigation into the resources, forces, or location of their enemies.

ART. 16. They are required to conform with the prescriptions of Articles 6 and 7 of the present order, and to entertain peaceful relations with all vessels, whether friends or enemies, anchored in the same harbor or within the same Belgian territorial zone.

ART. 17. The exchange, sale, or gratuitous cession of prizes or spoils of war are prohibited in the waters and harbors of Belgium.

ART. 18. All acts of hostility are forbidden on the part of foreign war vessels in Belgian waters.

ART. 19. Should men-of-war or merchant vessels of two nations in a state of war happen to be at the same time in a Belgian harbor or waters, there shall occur an interval of at least 24 hours, fixed by the competent authorities, between the departure of a vessel of one of the belligerents and the subsequent departure of a vessel of the other belligerent.

In this case an exception may be made in regard to the prescriptions of Article 8.

Priority of request secures priority of sailing.

However, the weaker of the two vessels may be allowed to sail first.

ART. 20. The government reserves the right to modify the provisions of Articles 8 and following of the present order, with the view to taking, in special cases and under exceptional circumstances arising, all measures which the strict observance of neutrality might render opportune or necessary.

ART. 21. In case of a violation of the provisions of the present order, the local authorities designated by the government will take all the means prescribed by special instructions, and will, without delay, notify the government, which will lodge with the foreign Powers the necessary protests and claims.

Special Provisions in Case of Army Mobilization.

ART. 22. As soon as the mobilization of the army is ordered all foreign men-of-war are forbidden to anchor in the Belgian waters and harbors of the North Sea without previous authorization from the government, except in case of dangers of the sea, shortness of supplies, or serious damage.

Except in cases of major necessity, as above described, no pilot shall be furnished to said vessels if they have not previously obtained the required authorization.

In what concerns the Belgian waters of the Scheldt, when permission to enter them shall have been granted, in those circumstances the sub-inspector of Belgian pilotage at Flushing will notify the commander of the vessel that he must stop off Fort Frederic to communicate that permission to the representative of the military governor of the post of Antwerp, who will be provided with the necessary instructions.

The Belgian flag is hoisted on the old Fort Frederic in a conspicuous place for approaching vessels.

Final Arrangements.

ART. 23. A copy of the present order will be handed by the naval authorities to the commander of every man-of-war or privateer as soon as he shall have been authorized to anchor in Belgian waters.

Given at Brussels, February 18, 1901.

BRAZIL.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

Foreign men-of-war are not permitted to carry on target practice with guns or torpedo practice in the territorial waters of Brazil.

BULGARIA.

All vessels desiring to put in at the port of Varna, must stop at 43°3′ north latitude and 27°58′3″ east longitude and await the arrival of the pilot tug.

Vessels may enter and leave the port from sunrise until sunset. A tug boat will leave the port each morning at dawn and will pilot the ships arriving at as well as those leaving the port.

Vessels desiring to leave the port in the evening must leave the dock one hour before sunset.

All navigation is forbidden on the sea between the shore, 43°5′ and 43°18′ north latitude and 28°10′ east longitude.

CHILE.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

CHINA.

There are no regulations governing the entrance of foreign men-ofwar into the ports of China, and no restrictions on the number of menof-war under one flag that may enter any one port at the same time, or on the length of stay at one port.

COLOMBIA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

COSTA RICA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

CUBA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

DENMARK.

15 January, 1913.

ARTICLE I. Warships of foreign nations are allowed, without previous notice, to navigate Danish waters and anchor in the same with the exception of inland waters, the harbor of Copenhagen, and closed waters. (See Arts. III, IV, and V.)

ART. II. With the exceptions mentioned in this article, foreign warships are permitted, without previous notice, to anchor for a short stay in the Danish harbors situated immediately on the natural routes of traffic passing through the Kattegat, the Sund, the Great and the Little Belt, and the ports of the Bornholm Island.

A stay of longer than 48 hours, as well as a visit from a squadron or a visit to Fredericia, Nyborg, Korsor, or Helsingor, should be previously announced diplomatically. (See, however, Art. VI.)

ART. III. Foreign warships shall be allowed to anchor in or navigate Danish inland waters or anchor in the harbors of the Danish Monarchy, other than those mentioned in Article II, first paragraph, provided previous notice has been given through diplomatic channels. (See, however, Arts. IV, V, and VI.)

The inland Danish waters include, besides the ports, entrance to ports, harbors, and bays, the territorial waters situated between and inside the islands, islets, and reefs not permanently under water.

The following are especially considered as inland waters:

The fiords of the eastern coast of Jutland.

The waters south of Fionia with the following inlets:

The pass between Langeland and Fionia.

The pass between Langeland and Aero Island.

The pass between Aero Island and Lyo Island.

The pass between Lyo Island and Fionia.

Odense Fiord.

The waters west and north of the line Hasenore-Samso-Endelave-Bjornsknude.

The waters of the east of the Island of Seiro.

That part of the Danish territorial waters of Kattegat, Sund, Great and Little Belt, which form the natural route of traffic between the North and Baltic Seas is not included in the inland waters. (See, meanwhile, Art. II.)

ART. IV. Warships of foreign nations are permitted to navigate or anchor in the port or harbor of Copenhagen when previously authorized. A previous notice through diplomatic channels shall be sufficient, provided Hollaenderdybet and Drogden passes are understood. (See Art. VI.)

The roads of Copenhagen are limited to the north by a line drawn from the port of Taarbaek to the luminous buoy "Taarbaek Rev," and from the latter point to the location of the luminous buoy "Saltholm Nord-Est," to the east by a line drawn from the location of said buoy to the entrance in the north end of the Island of Saltholm and from that point along the western littoral of Saltholm to the south end of that island; to the south, by a line drawn from that last point to the station of the fireship *Drogdens-Fyrskib*, thence to the position of the beacon "Aflandshage" (red beacon with twin brooms), and from the last point to the coast of Seeland in line with said beacon toward the steeple of Vallensback in the Island of Seeland.

ART. V. The inland waters named below are regarded as closed to foreign warships, and permission to anchor will be only delivered to the ships mentioned in Article VI.

Isefjord and its entrances.

Limfjord and its entrances.

The waters called Smaalandsfarvandet and the following entrances:

Agersosund.

Omosund.

The pass between the Omo and Lolland Islands.

Guldsborgsund.

Gronsund.

Bogestrommen.

ART. VI. The restrictions of Articles II, second paragraph, III and IV are not applicable:

- (a) To ships having on board chiefs of state or their official representatives, or members of a reigning family, or ships escorting such vessels.
 - (b) To vessels in distress.

(Confirmed by His Majesty the King, January 15, 1913.)

DENMARK PROTECTORATES.

Only one annual notification to the Danish Government will be required for visits by foreign men-of-war to the following territorial waters:

- 1. For passing to the west and north of the Island of Samso;
- 2. For admission of schoolships and fishery inspection ships to harbors in Iceland and the Faeroe Islands;
 - 3. For admission of fishery inspection ships to Esbjerg, and
- 4. For the admission of warships to harbors and roadsteads in the Danish West India Islands.

Copenhagen, February 1913.

ST. THOMAS.

It is no longer necessary to make, through diplomatic channels, the annual notification to the Danish Government of the names of the vessels of the United States Navy which may be expected to visit the ports and roadsteads of the Danish West Indies.

It will be sufficient if the American consul at St. Thomas communicates to the governor of the Danish West Indies the names of the United States men-of-war which may be expected to visit those islands during the course of the year.

ECUADOR.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

FRANCE.

In Time of Peace.

21 May, 1913.

ARTICLE 1. The term "man-of-war" shall be considered as applying not only to all the ships designated as such in the recognized sense of this word, but likewise to auxiliary ships of all sorts.

ART. 2. For the application of the present rules:

1. The home shores are divided into sectors, the limits of which are as follows:

Channel sector: From the Belgian frontier to Point Primel.

Atlantic sector: From Point Primel to the Spanish frontier.

Mediterranean sector: From the Spanish frontier to the Italian frontier (Corsica is comprised in this sector).

- 2. Tunisia, Algeria, and the Moroccan protectorate form a single sector.
- ART. 3. In time of peace foreign men-of-war are permanently authorized to visit the French ports and those of the protectorates, to anchor in the territorial waters at a distance less than 6 miles, from low-water mark, under reserve that the number of these ships flying the same flag does not exceed three per sector.

The ships which are already in a sector will be taken into account in

determining the number of ships that can be simultaneously admitted therein.

The notifications of a proposed visit should, however, always be transmitted through the usual diplomatic channels, so as to be received, if circumstances permit, at least 7 days before the date of the proposed visit.

Foreign men-of-war cannot remain over 15 days in the ports and territorial waters. They shall go to sea within 6 hours should they be so requested by the naval authorities or by the *commandants d'armes*, even in case the delay fixed for their stay may not have expired.

- ART. 4. A special authorization of the Government of the Republic, obtained through the usual diplomatic channels, is necessary, as much for the prolongation of the duration of stay as for the admission of a number of ships in excess of that specified in Article 3.
 - ART. 5. The prescriptions of articles 3 and 4 do not concern:
- (a) Men-of-war and ships on board of which are embarked chiefs of states, members of reigning dynasties or their suites, diplomatic officers accredited to the Government of the Republic;
- (b) Men-of-war which are compelled to put into port on account of damages, bad weather, or other unforeseen causes;
- (c) Ships charged with the surveillance of fisheries, in accordance with the conventions concerning such fisheries.
- ART. 6. In the ports, capitals of naval districts, or seat of a commandement de la marine, the right to assign berths to foreign men-of-war and to have them shift berth, if necessary, is assigned exclusively to the maritime prefect or the commandant de la marine.

In all the other ports this right is assigned to the captain of the port.

ART. 7. Upon entering a port, foreign men-of-war will be boarded by a naval officer, sent by the maritime prefect or the *commandant de la marine*, or by a port official, sent by the captain of the port, who will present to the commanding officer the courtesies of the port.

The officer will inform the commanding officer of the berth which has been assigned to his ship; he will inform himself of the object and the proposed duration of the visit, of the name of the commanding officer, and all information that it is customary to collect on such occasions.

In case the officer charged with welcoming the foreign men-of-war should arrive on board after the same had anchored or moored, he should, nevertheless, make his communication and the prescribed inquiries; he will likewise confirm the berth already taken or will assign another.

In anchorages where there is no captain of the port, and in the absence of a French ship, the foreign man-of-war will be boarded by a customhouse officer.

ART. 8. Foreign men-of-war which put into a port or enter territorial waters are under the obligation of respecting the fiscal laws and the laws and regulations of the sanitary police.

They are also under the obligation of complying with all the regulations of the port governing ships of the national navy.

With this object, the local maritime authorities will furnish the commanding officer with all the information necessary concerning the port regulations.

Foreign men-of-war within the territorial waters are forbidden to make surveys, to take soundings, to send landing parties ashore, or to hold target practice without having obtained permission.

No submarine work, performed with or without a diver, shall be performed without previously advising the maritime authorities.

The crew and marines shall be without arms when they land. Officers and noncommissioned officers may wear side arms forming part of their uniform.

The number of liberty men who may go ashore, the hours for going ashore and returning on board will be fixed by agreement with the local civil authorities and the *commandant d'armes*.

Boats circulating about the ports and territorial waters shall not be armed.

No foreign man-of-war shall execute a sentence of death within territorial waters.

In case that funeral honors should be rendered on shore and that the commanding officer desires that the cortège be accompanied by a detachment under arms, he should request authorization of the commandant d'armes.

ART. 9. The conditions of access and stay of belligerent foreign menof-war is regulated in accordance with the prescriptions of the decree of October 18, 1912, always remaining subordinated to the formalities of notification or of previous authorization, specified in Articles 3 and 4 of this decree, excepting in cases of uncontrollable circumstances, provided for in paragraph b of Article 2.

ART. 10. In case a foreign man-of-war does not conform to the rules

laid down in this decree, the naval or the local military authority will first draw the attention of the commanding officer to the violation committed and will formally request him to observe the regulations.

Should this be unavailing, the proper authority, préfet maritime, commandant de la marine or commandant d'armes may invite the foreign man-of-war to immediately leave the port or the territorial waters.

(Done at Paris, May 21, 1913.)

In Time of War.

26 May, 1913.

ARTICLE 1. In time of war the conditions of entrance and of stay of vessels other than French warships in the anchorages and ports of the French seacoasts and of dependent countries are covered by the dispositions specified in the following articles:

ART. 2. No French merchant ship, no foreign man-of-war or merchant ship may approach, without exposure to destruction, the shores of French territorial waters or of French dependencies nearer than 3 miles, without having been authorized to do so.

This prohibited zone is extended to 6 miles off shore from bases of operations of the fleet between the limits fixed hereafter with reference to each:

Cherbourg.—From the meridian of Cape Levi to the meridian of Point de Jardeheu.

Brest.—From the parallel of the Four Lighthouse to the parallel of Point Raz.

Toulon.—From the meridian of Bec-de-l'Aigle to the meridian of Cape Benat.

Bizerta.—From the meridian of Raz Enghela to the meridian of Cape Zehib.

ART. 3. Between sunrise and sunset every vessel covered by the present decree must show its national colors and its number in the international code if it possesses one, from the moment it approaches the prohibited zone. Should it desire to enter it makes the request to do so by hoisting the pilot flag, but it remains outside of this zone until entrance has been granted by semaphore, a signal station, or boarding vessel.

A reply of a semaphore or a signal station is made by the following signals of the international code:

Flag S: Entrance granted.

Pennant D: Entrance deferred.

Flag Q. Entrance prohibited.

Should the request be granted, the vessel enters at reduced speed the prohibited zone, keeping the pilot flag flying.

If the entrance is deferred, the vessel maneuvers in such a way as to keep clear of the entrance of the channel, awaits the boarding vessel and steams toward it at reduced speed as soon as seen.

Should the entry be prohibited, the vessel should renounce its efforts to enter and should take up another anchorage.

The boarding vessel is indicated by three balls hoisted on the same hoist.

ART. 4. Between sunset and sunrise every vessel covered by the present decree must show its national colors and have its running lights lighted from the moment it approaches the prohibited zone, Should it desire to enter, it makes the request to do so by burning one or more Bengal lights, accompanied by blasts of the whistle or siren, but it remains outside of the zone until the authorization to enter has been granted by the boarding vessel.

The ship with its running lights burning awaits the boarding vessel, burning, if necessary, more Bengal lights to draw its attention, and if it has not been signaled may steer toward it at reduced speed upon sighting.

The boarding vessel is indicated by three red superposed lights.

A red Coston light burnt from a post on shore signifies that entrance is prohibited; the vessel should then renounce its efforts to enter and should take up another anchorage.

Between sunset and sunrise it is forbidden, in principle, to all ships covered by the present decree to request entrance to the zone situated off the bases of operation of the fleet: Cherbourg, Brest, Toulon, Bizerta, defined in Article 2; the only cases where commanding officers may request entrance being the following:

Vessels authorized to do so by the government, either at their departure or while en route.

Vessels in danger and in the absolute impossibility of awaiting daylight at sea or of taking up another anchorage.

ART. 5. In case of fog, all vessels covered by the present decree desiring to enter a prohibited zone hoist the same signals as in clear weather and blow blasts of the whistle or the siren until authorized to enter by a boarding vessel.

Access to the bases of operation of the fleet: Cherbourg, Brest, Toulon, Bizerta, is prohibited in case of fog under the same conditions as those specified in Article 4.

ART. 6. Every vessel covered by the present decree is required to instantly obey all injunctions of a man-of-war, a boarding vessel, a semaphore, or a signal station, made by word of mouth, by international signal code, or by a warning shot.

Every vessel warned by a battery or by a man-of-war should, whatever its distance from shore, stop immediately, checking her headway. After having stopped, every ship warned may renew its request for entrance, but it should await where it is such orders as may be given.

If in spite of a warning shot a vessel does not stop on the spot, there shall be fired two minutes later a shotted gun, and if in a new interval of two minutes the vessel has not stopped and checked its headway, fire shall be opened directly against it. In case of urgent necessity, the blank warning shot may be suppressed. At night the shotted gun may likewise be suppressed, and every vessel penetrating a prohibited zone without authority exposes itself to destruction without previous warning.

ART. 7. Vessels authorized to enter French roadsteads or ports, or those of the French protectorates, should take up the anchorages indicated to them by the local authorities and should conform strictly to the regulations of whatever nature issued by such authorities. The length of the stay will remain subordinated to the necessities of a military nature, and when circumstances require, ships may be required to go to sea or to withdraw to an indicated point; this order should be carried out without delay. An extension may, however, be granted to vessels which find it justifiably impossible to immediately comply. No vessel may get underway, either to shift berth or to leave the roadstead, without having received permission from the local authorities to do so. The request may be made by the signal flag S.

ART. 8. In military roadsteads and ports, between sunset and sunrise, all movements of boats other than those belonging to French menof-war are absolutely prohibited. From sunrise to sunset such movements are authorized only for boats to which the naval authorities shall have delivered permits for special circulation and means of identification.

The boats authorized should keep away from men-of-war if they are

enjoined to do so, and in no case may they go alongside without having received permission to do so. The circulation of these boats, moreover, remains subject to local orders, notably referring to the prohibition of entering certain parts of the roadstead and of approaching from any other direction than those expressly designated.

In commercial ports similar measures will be taken by the local authorities to impose upon the circulation of the boats the restrictions deemed necessary, always taking into consideration the interests of commerce.

- ART. 9. Visits of neutral men-of-war remain subject, in so far as previous notification or authorization are concerned, to the prescriptions of the decree of May 21, 1913, the conditions of entrance and of stay being regulated by the present decree.
- ART. 10. The measures contemplated by the present decree will be applicable from the moment of mobilization or after special advice.
- ART. 11. All infractions of the present decree, in addition to the risk of destruction entailed, will bring about such measures of suppression as the circumstances require.
- ART. 12. Dispositions contrary to the present decree are abrogated. ART. 13. The Minister of Marine is charged with the execution of the present decree.

(Done at Paris, May 26, 1913.)

Belligerent Men-of-War.

18 October, 1912.

- ARTICLE 1. In case of a war between two Powers, in which the Government of the French Republic shall have decided to remain neutral, the following provisions will be applied in all ports, roadsteads and territorial waters of the republic or those under its jurisdiction.
- ART. 2. For the application of the precepts of the 13th Hague Convention dated the 18th October, 1907:

The French territorial waters shall extend out to a limit which is fixed at ten nautical miles (11,111 m.) to sea from low water mark, along the entire length of the coast and the exposed neighboring shoals, as well as around the fixed buoys which mark the limits of unexposed shoals. For the bays, the radius of 11 kilometers shall be measured from a right line drawn across the bay, in the part nearest the entrance, at the first point where the opening does not exceed 10 miles. If the distance from

the French coast or shoals to the nearest point of the coast or shoals of a foreign state is less than 22 kilometers, then the French territorial waters shall extend only to a point half way between these coasts or shoals.

- ART. 3. The maximum number of men-of-war—battleships, armored cruisers, protected cruisers, armed transports or scouts of a belligerent—that may be present at the same time in a French port or roadstead will be four.
- ART. 4. In addition the vessels of the flotillas,—destroyers, torpedoboats and submarines—will be admitted in group, following their normal organization. Their number cannot, nevertheless, be more than 12.
- ART. 5. War vessels of belligerents, with the exception of those which are engaged solely in a religious, philanthropic or scientific mission, cannot remain in French ports, roadsteads or territorial waters for more than seventy-two hours. In this length of stay is included the time necessary for administrative formalities and for interviews with contractors having in view the possible loading of fuel.
- ART. 6. If after the receipt of the notification of the opening of hostilities by the Government of the Republic, or after a state of war has become generally known, a belligerent man-of-war finds itself in a French port or roadstead or in French territorial waters, it shall be notified that it must leave within a period of seventy-two hours counting from the said notification.
- ART. 7. Men-of-war of belligerents cannot prolong their stay in the ports of the republic beyond the legal period except in case of damage or by reason of the state of the sea. They must depart as soon as the cause of the delay shall have ceased to exist.
- ART. 8. Belligerent vessels cannot re-victual except for the purpose of completing the supply of provisions and consumable stores normally carried in times of peace.

In the matter of fuel they will be permitted to replenish their bunkers, properly so-called, to their full capacity.

- ART. 9. The belligerent vessels will be authorized to use certified pilots.
- ART. 10. Access to the ports and roadsteads of France will be permitted to prizes, whether escorted or not, when they are brought there for safe-keeping pending the decision of a prize tribunal.
 - ART. 11. The Minister of Foreign Affairs and the Minister of Marine

are charged, each in that which concerns him, with the execution of the present decree.

Done at Rambouillet, 18 October, 1912.

By the President of the Republic

The President of the Council.

Minister of Foreign Affairs,

M. Poincaré.

A. Fallières.
The Minister of the Navy,
Delcassé.

COLONIES.

30 August, 1913.

In view of the decree of the 26 May, 1903, forming the colonial group from a military point of view, modified by the decree of the 17 February, 1909:

In view of the decree of the 18 October, 1912, making applicable in the ports, roads and French territorial waters Articles 11, 12, 13, 14, 15, 19, and 23 of the thirteenth Convention of The Hague, concerning the rights and duties of neutral Powers in case of a maritime war;

In view of the decree of the 26 October, 1912, making applicable to French possessions under the Colonial Department the provisions of the before-mentioned decree;

In view of the decree of the 21 May, 1913, making regulations for the visits of foreign men-of-war, in time of peace, to the anchorages and ports of the French coast and of the protectorate countries;

Considering the advice of the Minister of the Navy:

On the report of the Colonial Minister,

Decreed:

ARTICLE 1. The provisions of the decree of the 21 May, 1913, making regulations, in time of peace, for the visits of foreign men-of-war to the anchorages and ports of the French coast and of the protectorate countries are made applicable to the French possessions controlled by the Colonial Minister, with the following restrictions.

- ART. 2. For the application of the present regulations, the possessions referred to are divided in sectors. Each colonial group, which has been constituted by the decree of the 26 May, 1903, modified by the decree of the 17 February, 1909, cited above, constitutes a sector.
- ART. 3. The delay of seven days fixed by paragraph 3, Article 3, is extended to thirty days for visits made to the ports and harbors situated in the colonies.
 - ART. 4. At anchorages where there is not a captain of the port, if

no vessel of war is present, the foreign man-of-war is boarded, under the conditions provided for in Article 7, by the army commandant or a functionary designated by the highest local civil authority.

ART. 5. The Colonial Minister is charged with the execution of the present decree, which will be inserted in the Official Journal of the French Republic and published in the Official Bulletin of the Colonial Minister.

Done at Sampigny, 30 August, 1913.

GERMANY.

18 August, 1911.

I. Warships and other vessels of war of foreign Powers do not require any special permission for putting into fortified and unfortified German ports and river mouths, and for navigating inland waters. Timely information of the visit in prospect, communicated through diplomatic channels, is, however, required. Without such notice foreign vessels of war will not be allowed to pass within the outermost line of fortifications, nor to remain within the roadstead, or harbor, or in river mouths and inland waters, with the exception of the cases mentioned in Paragraph III. As regards the use of the Kaiser Wilhelm Canal, see Paragraph III.

The number of vessels of war of the same foreign power that will be allowed to stay at the same time in a fortified or unfortified port will generally be restricted to three. For an exception to this rule consent will be necessary, obtained through diplomatic channels.

- II. The above rules will not be applied:
- (a) To such ships as may have on board sovereigns, members of the families of sovereigns, presidents of republics or their suites, or the ambassadors or envoys at the court of His Majesty the Emperor;
- (b) To such ships and vessels as may be compelled by stress of weather or injury to put in to a German port.
- III. Foreign vessels of war must not pass through the Kaiser Wilhelm Canal unless permission to do so shall have been obtained through diplomatic channels.
- IV. In such ports as are fortified or occupied by a garrison, without being stations of a chief of naval station, the commander of pilots or the harbor master shall, without delay, inform the officer in command of the approach and arrival of any foreign warship. At Neufahrwasser

the commander of the pilots shall at the same time inform the superintending director of the dockyard at Danzig.

The officers in command shall directly inform, by telegraph, the general headquarters of the army corps concerned, the headquarters of the naval station of the North Sea or Baltic Sea, the admiral staff of the navy, and the navy office of the arrival of foreign warships or vessels of war.

In such ports as are not occupied by any garrison, the police authority shall inform by telegraph the authorities mentioned of the arrival of any foreign warships or vessels of war.

- V. Only the chief of naval station or officer in command, as the case may be, is authorized to assign foreign warships and vessels their anchorage places, and to require them to shift them if necessary. He shall come to an understanding with the customs authority in order to be able to pay due regard to the interests of the latter when assigning anchorage berths.
- VI. The pilots at the fortified ports must be instructed whether any foreign warships, or which and how many, may put in without having obtained permission beforehand, or whether such permission must be previously obtained, and where the ships are to be anchored or moored. The officer in command, moreover, as far as the interests of the navigation police or harbor police are involved, shall obtain the opinion of the commander of pilots or the harbor master and observe it as far as practicable.
- VII. Ships and vessels of foreign navies are not obliged to take a pilot for putting into a roadstead or anchorage. Within the lines of fortification of a German port, however, they are subject to the police regulations of the same.
- VIII. If the harbor police regulations are violated by a foreign warship or vessel, the attention of the commander of the ship must first be called to the fact and careful observance of such regulations be insisted upon. Should such steps not be sufficient, the competent authority, in case of imminent danger, shall interfere according to his own discretion, or, if it is not a case of urgency, obtain the directions of superior authority.
- IX. When a foreign warship, vessel, or squadron crosses the line of fortifications from seaward an officer will be sent them. If the place does not belong to the imperial war ports, such officer will be accompanied by the commander of pilots or the harbor master.

X. The officer will inform the commander of the ship, or squadron, whether it may touch and how long it may stay in the roadstead or harbor. The officer, or the commander of pilots or harbor master will, if proper, indicate to the commander of the ship or squadron the place of anchorage and inform him of the pertinent provisions of the harborpolice regulations. The officer of the ship or squadron, the names of the ships, the strength of their armament and complements, the port of departure, the purpose of the visit, the intended length of stay, and the sanitary state of the complement. If the commanding officer of the ship or squadron acquaints this officer of his intentions to stay in the roads or to put into the harbor, the officer will offer himself to accompany an officer to be sent to the chief of station or to the officer in command for reporting.

XI. When, in case of exception, a foreign warship or vessel crosses the line of fortification from seaward at night, the welcoming officer will not be sent until the following morning. The ship may anchor at will, or, in case she took a pilot, according to the direction of the latter, but she will be obliged to change her anchorage as soon as requested to do so by the commander of station or officer in command.

XII. In case the officer sent for welcoming should not arrive on board a foreign warship or vessel entering in the daytime until she has already anchored or made fast, the prescribed welcoming, information, and inquiries, as well as the subsequent confirmation of the anchoring place chosen or the assigned or some other anchorage place, will take place nevertheless.

XIII. When the officer in command of a foreign warship or squadron does not show to the officer, sent to welcome him, his willingness to send an officer to report the ships to the chief of station or to the officer in command, the former officer will at once return and report to the chief of station or to the officer in command.

XIV. When the harbor fortification is possessed of a sufficient garrison, a saluting battery will be established. This battery will fly the German war flag. The flag will be shown as soon as a warship may approach. The salute fired by foreign warships or vessels before anchoring, or in exceptional cases, later on, will, after the last shot, at once be returned by that battery, gun for gun. The foreign warships will be informed thereof by the pilots they may employ.

XV. When a foreign warship or vessel, after having been informed by

an officer by order of the chief of station or officer in command, that she may not be allowed to cross the line of fortification or some other limit situated within the roadstead or harbor, does, notwithstanding, continue on her course, without being compelled to do so by stress of weather or injury, to be indicated by the usual signals, she will first be warned by the works of the harbor fortifications by two rounds, the first of which shall be directed 400 meters clear of the ship, the second 200 meters. When, nevertheless, the ship shall continue on her course, the gun fire of the harbor fortifications will be directed first against her masts, and then against her hull.

The same proceeding will take place when the ship has anchored within the range of the fortress guns, and after having been informed by the chief of station that she may not be allowed to remain any longer within the harbor or roadstead, refuses to leave her anchorage.

When a ship, notwithstanding such notification, moves or anchors within the line of fortification but out of reach of the fortress, the chief of station, or the officer in command, is authorized to take any other steps to drive the ship away.

XVI. In case of a foreign warship or vessel putting into an unfortified harbor, the harbor-police authorities will obtain the information prescribed in Paragraph X, and will, without delay, report it to the senior of the garrison in the harbor, or otherwise to the provincial police authority. The competent general headquarters of the army and the headquarters of the naval station of the Baltic Sea, or North Sea, respectively, will at once be informed of the report.

GERMAN PROTECTORATES.

15 April, 1913.

- 1. For calling at the ports and river mouths of the German protectorates warships and warcraft of foreign Powers need no special permission. However, there must be transmitted in due time, through diplomatic channels, a notification regarding the visit, which shall contain the date and object of the visit, its duration, and the names of the places at which calls will be made. This notice should be given early enough to make it possible for the governor of the protectorate to make arrangements for the contemplated visit.
- 2. The number of warships and warcraft belonging to the same foreign nation that are permitted to stay in a German protectorate at

the same time is, as a rule, limited to three. Permission for exceptions to this practice must be requested through diplomatic channels.

- 3. The warships and warcraft are required to observe the wishes of the authorities of the protectorate with reference to not calling at certain places.
- 4. In visits to the protectorates in the Pacific Ocean warships and warcraft must first call at the principal port. The following shall be regarded as principal ports:

Rabaul, for the Bismarck Archipelago and Kaiser-Wilhelmsland (German Papua); Ponape, for the Marshall Islands and the Eastern Caroline Islands; Yap, for the Western Caroline, Mariana, and Palau (Pelew) Islands; and Apia, for Samoa.

- 5. The foregoing regulations do not apply:
- (a) To ships and other vessels that have on board sovereigns or members of sovereigns' families or presidents of republics or their suites.
- (b) To ships and other vessels which are obliged by perils of the sea or by accident to call at one of the ports of a protectorate.
- (c) To ships and other vessels which are stationed at the neighboring possessions of foreign Powers and are accustomed to make regular calls at certain ports of a German protectorate.
- Foreign warships and warcraft shall be treated like German warships with respect to laws and ordinances relating to the police, sanitation, and fiscal matters.

(Done at Bad Homburg v. d. Höhe, Apr. 15, 1913.)

Belligerent War Vessels.

14 May, 1913.

1. With reference to the admission of warships there shall apply Articles 1 to 3 of the Regulations regarding the Admission and Treatment of Foreign Warships in the Harbors and Waters of the German Coasts, of May 24, 1910. They read as follows:

ARTICLE 1.

War vessels (warships and war craft) of foreign powers require no special permission for calling at fortified and unfortified German harbors and river mouths and for the navigation of inland waters. Nevertheless a notice of the impending visit must be transmitted in good time through diplomatic channels.

Without this, foreign war vessels, with the exception of the cases given in Article 2, may neither cross the outermost line of defense (fortification) nor stop in roads,

harbors, river mouths, or inland waters. With reference to the use of the Kaiser Wilhelm Canal, see Article 3.

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The number of war vessels belonging to the same foreign nation that are permitted to stop at the same time in a fortified or unfortified harbor, etc., is, as a rule, limited to three. Exceptions require permission requested through diplomatic channels.

ARTICLE 2.

The foregoing regulations do not apply:

- (a) To vessels that have on board sovereigns, members of families of sovereigns, presidents of republics or their suites, or ambassadors or envoys to the court of His Majesty the Kaiser;
- (b) To vessels which have been obliged by danger of sea or by accident to stop in a German harbor, etc.

ARTICLE 3.

For passage through the Kaiser Wilhelm Canal foreign war vessels require previous permission transmitted through diplomatic channels. In case a previous notice through diplomatic channels is not possible, it is to be communicated without delay through the local authorities.

- 2. Registered pilots may be granted (geusztanden) only for a direct trip from the sea into a harbor or for a direct trip from the harbor to the open sea.
- 3. In the waters under German sovereignty war vessels of belligerents are obliged to refrain from all hostilities, including capture, interception and the practice of the right of search. Neither may they hold any prize court therein.
- 4. Within the ports and roads they may repair injuries only to such an extent as is necessary for their safety of navigation, but they may neither repair, strengthen nor increase their military stores or armament nor enlarge their complements nor in any other way heighten their military power.
- 5. At each visit they may replenish their supplies of coal to the full capacity of their bunkers. They may also increase their stores of food and drink and of anything else necessary for the peaceful operation of the ship.
- 6. They must leave waters under German sovereignty 14 days at the latest after their arrival therein or, in case they have to remain longer in order to carry out such work as is specified in Article 4, immediately after the completion of the said work.

In case the weather should make it impossible for them to leave then, or in case the conditions set forth in Article 9 should come into effect,

permission to remain will be extended for the necessary length of time.

- 7. In the harbors which are situated in the immediate neighborhood of the seat of war, Article 6 applies, with the sole change that the words "24 hours" shall be substituted for "14 days."
- 8. The provisions of Articles 6 and 7 do not apply to war vessels which are engaged exclusively in religious, scientific, or philanthropic work.
- 9. If there should be present simultaneously in the harbor or roadstead war vessels of both belligerents, at least 24 hours must elapse between the departure of ships of one belligerent and that of ships of the other. In case both parties have at the outset chosen the same day for departure the order of their departure shall be determined by that of their arrival.

Warships of a belligerent may not leave a harbor or a roadstead less than 24 hours after the departure of a merchant vessel flying the flag of the enemy of the said belligerent.

- 10. Prizes may put in only:
- (a) On account of unseaworthiness, or bad weather, or on account of deficiency in fuel or supplies, in which cases they must leave again as soon as the cause that justified their putting in has been removed;
- (b) When they are to be allowed to remain in the harbor until the prize court has made its decision, in which case they must be given over to the neutral German authorities for safe keeping.

Issued at the New Palace, May 14, 1913.

GREECE

There are no regulations published by the government upon the subject of visits of foreign men-of-war to the ports of Greece, and there is no limit to the number of men-of-war under one flag that may visit any port at the same time or to the length of time they may remain in port.

As a matter of courtesy, in case a single ship intends to visit a Greek port, the authorities of the port should be notified of the fact through the American consul, and if a fleet or squadron desire to visit any port the matter should be arranged beforehand through the American legation at Athens.

 $^{1}\,\mathrm{When}$ the case arises the Imperial Chancellor will enumerate the ports here indicated. \cdot

GUATEMALA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time nor as to the duration of such visit. There are no closed ports in this country.

HATT

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time nor as to the duration of such visit. There are no closed ports in this country.

HONDURAS.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time nor as to the duration of such visit. There are no closed ports in this country.

ITALY.

24 May, 1906.1

ARTICLE 1. Warships belonging to friendly nations are permitted to anchor on the entire Italian coast subject to the restrictions imposed by Articles 2, 3, 4, and 5, except that the right is reserved, if the case should arise, to prohibit them altogether from approaching the coast, in conformity with the rights of nations.

ART. 2. In fortified maritime places foreign warships shall not remain for a period exceeding eight days, nor shall more than three foreign warships of the same nationality assemble in any of the anchorages enumerated below.

The above-mentioned limitations may be exceeded only in case of distress, or after formal permission has been obtained from the Royal Government through diplomatic channels.

When a foreign naval force composed of a larger number of ships enters a maritime place, the local naval authority shall at once notify the commander in chief of such force of the provisions contained in the first paragraph of this article, so that he may send off the ships in excess of the number specified.

Foreign warships may also be prohibited, in the interest of the national defense, from passing through or remaining in certain localities of the territorial waters which may be designated in particular cases.

¹ As amended in Art. 3, by decree of February 5, 1914.

Such prohibition, whether temporary or permanent, shall be published in the same manner as hydrographic notices concerning navigation, and the semaphores, signal stations, and national warships in the vicinity of such localities shall notify foreign warships which may pass in their vicinity, by international signaling methods, of such prohibition.

ART. 3. The following localities are naval ports: Vado (Savona), Genoa, Spezia, Monte Argentario (Talamone and Port San Stefano), Gaeta, La Maddalena and adjacent islands and the Sardinian coast, Messina and adjacent anchorages on both sides of the straits, Taranto, Brindisi, Venice and the anchorages of the lagoon.

Salutes must be exchanged between the above mentioned ports (excepting Vado and Monte Argentario) and foreign ships approaching the respective anchorages and in condition to return the salute.

This obligation is extended also to the anchorages of Naples, Palermo, Ancona and Tripoli, as well as any other national or colonial anchorage in which there is a royal ship in condition to return the salute.

ART. 4. Foreign warships at anchor in the foregoing localities are bound to put to sea whenever requested to do so by the Royal Government, even though the period of time allowed by Article 2 may not have expired since their arrival.

ART. 5. Upon the arrival of a foreign warship in a harbor or roadstead of the state, the naval authority shall assign an anchoring place to her on the basis of local regulations; in the absence of such assignment the ship shall be at liberty to anchor where she may deem best.

Upon entering or leaving the anchorage of a fortified maritime place within the limits of the defense such ship, upon receiving a request to that effect from the naval commandant of the place, shall be bound to accept the guidance of an officer or other person sent by said commandant for that purpose, and comply with his instructions as regards the route to be followed for entering and leaving the anchorage. Such service is gratuitous and no responsibility shall attach to the Royal Government and to its subjects for any injuries which the ship may sustain, and is entirely distinct from the service of ordinary pilotage, which may be asked for by the ships themselves by means of the prescribed signals, or offered by the local pilots, or which may be obligatory owing to peculiar local conditions.

ART. 6. The naval officer or harbor official charged with meeting a foreign warship or naval force upon arrival in a harbor or roadstead of the state in order to point out the anchoring place to be occupied by

such ship or naval force, after the sanitary formalities have been complied with, shall transmit to the commanding officer of the ship or to the commander in chief of the naval force a copy of the annexed interrogatory, in order that he may enter thereon the information it asks for and affix his signature thereto.

He shall also transmit to the commanding officer or commander in chief a copy of this decree, so that the latter may take cognizance thereof.

If a ship or naval force is not admitted to free pratique the officer or official designated confines himself to transmitting a copy of this decree to the commanding officer of the ship or the commander in chief of the naval force, who, observing the sanitary precautions prescribed, shall send the medical officer or another representative to the local health office to furnish the necessary information for filling out the interrogatory and to be advised of the sanitary treatment to which the ship or ships must be subjected.

ART. 7. Foreign warships anchoring at any point of the Italian coast are bound to respect the police, health, and customs laws in force and to conform to all the harbor regulations to which the ships of the Royal Italian Navy are subject.

To that end the local naval authorities shall furnish to the commanding officer or commander in chief all necessary information.

ART. 8. In every maritime place or military port the national flag shall be kept flying from one of the fortification works from 8 o'clock in the morning until sunset.

The national flag shall also be kept flying temporarily from the period stated to beyond the hours specified, provided its colors can be distinguished, when a warship is in sight and under way, and whenever a warship in sight has her colors displayed.

ART. 9. No ship shall make surveys and carry out hydrographic operations within Italian territorial waters without special permission from the Royal Government.

ART. 10. No warship shall execute sentences of death within the territorial waters of the kingdom.

ART. 11. Warships of belligerent Powers which may be within the territorial waters are prohibited from any acts of hostility against each other. When this provision is found to have been violated, such ships as do not obey the intimation to desist will be treated as hostile by the Italian forts and warships.

ART. 12. Foreign warships and merchant vessels fitted as privateers are prohibited from bringing in prizes or from stopping and visiting ships within the territorial waters and within the sea adjacent to Italian islands, and from doing any other acts which may constitute an offense to the rights of sovereignty of the state.

ART. 13. With the exception of officers and warrant officers, the crews of foreign warships shall always go on shore unarmed.

If in the case of funeral honors to be rendered to anyone who has died on board, the commanding officer wishes the remains to be accompanied by an armed escort, he shall ask permission from the highest local authority of the navy or army, and in the absence of such from the harbor authority.

ART. 14. Foreign warships are prohibited from carrying out landing exercises on the Italian coast or target practice within range of the coast guns of the Kingdom without having obtained special permission to do so through diplomatic channels

ART. 15. In case of transgressions it shall be incumbent upon the local naval authorities, or in the absence of such, on the highest official of the harbor office, and in the absence of such office, on the army authorities, to intimate to the foreign warships strict observance of the provisions contained in this decree. In case of persistence in the transgression or of refusal to comply with such intimations, such authorities shall formally protest and shall at once notify by telegraph their respective superiors—the proper authorities of the department, or the naval or military commandant, or the Minister of War, or the Minister of the Navy.

ART. 16. Articles 12 and 13 of the royal decree of April 6, 1864, No. 1728 (first series), on the neutrality of ports, the royal decree of June 16, 1895, No. 430, on the anchoring of foreign warships in the harbors and on the coasts of the kingdom, and other regulations contrary to the provisions of the present decree are hereby abrogated.

(Done at Rome on the 24th day of May, 1906.)

Interrogatory of Arrival of Foreign Warships in the Harbors and Anchorages of the State.

The commanding officer is asked to have entered on this sheet the information requested therein:

- 1. Nationality of ship.
- 2. Name and type of ship.

- 3. Armament (number and caliber).
- 4. Name and rank of commanding officer.
- 5. Strength of complement.
- Number of passengers.
- 7. Sanitary condition.
- 8. Port of departure.
- 9. Destination.
- 10. Probable length of stay at the anchorage.
- 11. Motive of entering the harbor.

Dated		, 1	L9	
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(Signature of commanding officer.)

Rules for Regulating the Entrance of Foreign Warships into Some Maritime Places of the Kingdom.

The entrance of foreign warships into the strongholds of Spezia, Magdalena, Taranto, Brindisi, and Venice shall be limited to the hours comprised between sunrise and sunset; however, the ships must first request permission to enter, by means of wireless telegraphy, of the harbormaster.

If the permission is granted, the ship will proceed via the semaphore station, as indicated below, and then stop at a distance of not less than three miles from said station and hoist its ensign:

Palmaria semaphore for the harbor of Spezia.

Cape Ferro or Cape Yesta semaphore for the maritime harbor of Magdalena.

San Vito semaphore for the maritime harbor of Taranto.

Brindisi semaphore for the maritime harbor of Brindisi.

Submarine signalling and semaphore station of San Nicolo for the maritime harbor of Venice.

The commander of a place (harbormaster) who has been notified by the semaphore station shall send an officer on board the warship for examination and pilotage.

In Time of War.

20 August, 1909.

ART. 1. At any time a fortified harbor must be policed on a war basis, the commandant, if the circumstances require it, shall notify the vessels

in general, war and commercial, which are found anchored in the zone of defense, to get under way and shift berths to berths he assigns to them.

The vessels which receive the notice to get under way are required to get out of the line of artillery fire within 12 hours from the time the order notifying them is received on board.

Vessels which are found not in condition to go to sea at the expiration of the time limit are allowed, subordinately to the exigencies of the harbor, all the facilities possible.

For the execution of the said order, the commandant can make use of all the means that the need and the urgency of the case require.

ART. 2. It is absolutely forbidden in time of war, as well by day as at night, for lighters belonging to private individuals and for ships' boats of neutral warships, anchored in the waters of a fortified harbor, to move about in the said waters without previous special assent, left to the discretion of the commandant of the port.

The nation's commercial vessels and those of the nation's allies, neutral ships of war which are anchored in a fortified harbor, can communicate with the shore only during the day, from sunrise to sunset, and their ships' boats must travel by the most direct route to the landing place which shall be established by the commandant.

These same ships are forbidden to keep their boats lowered during the night. If at any time, for urgent reasons, it becomes necessary for them to communicate with the shore during the night a boat for this purpose can be furnished by the commandant of the port upon request made by pre-arranged conventional signal. Any other signaling whatsoever is absolutely prohibited.

ART. 3. Any ship which in time of war is near a fortified harbor during the night, whether it may be with the intention of requesting entry, or whether it may be only passing by within sight of the defense works, must beforehand identify herself and shall not proceed toward the anchorage without having first obtained explicit permission from the commandant of the port or from the commandant of the local harbor defenses.

ART. 4. To the warships or national auxiliaries and allies there will be distributed by the minister (office of the chief of staff) special confidential pamphlets containing the plans agreed upon to govern the recognition and the entry into the harbor.

ART. 5. The national commercial ships and those of the allied nations, the neutral warships or commercial ships, to make their recognition possible, should hoist their national ensign so that it will be clearly visible, also their international signal code number.

Those desiring to enter the harbor must stop at the maximum distance from the coast at which the signals are visible and semaphore distance (for no method is it ever less than 5 miles) sending from there the request for entry, which consists of the aforesaid international code number, with the conventional flag requesting a pilot, or with the international code signal PD, "Request permission to enter port."

ART. 6. The semaphore station of the fort which receives this signal shall immediately notify the commanding officer, giving such additional information as the chief of the semaphore station may deem useful, such as the nationality, the distance, the bearing, etc.

If the commanding officer does not believe it advisable to grant the request for entry, he will cause the same semaphore station to reply with the signal USX, "Regret not being able to comply with the request."

If, however, he grants the request, he will send a pilot to the vessel, who must pilot it to the anchorage. He may also send an officer with special instructions to investigate the reasons for the vessel's approach and her visit, with instructions to grant or deny entry, according to the results of his visit.

The commanding officers of forts shall carefully arrange conventional signals by means of which the boarding officer or the pilot may transmit through the semaphore station such information as may be urgent or necessary to communicate. One of these signals must indicate that the vessel has been boarded, and another that the pilot has been taken aboard, but it must be established principally that the signal, variable from day to day, must be hoisted in a clearly visible position, so that it can indicate to the semaphore station and to the guard ship that the vessel which flies it has obtained permission to enter port and proceed to an anchorage.

ART. 7. The commandant of the port will judge whether or not to grant entry into the harbor to the vessels mentioned in Article 5, whenever their presence in the waters of the port will not disturb or obstruct the development of the means of defense. In this respect the said authority should take into account—

- (a) That entry is forbidden during the night;
- (b) That to neutral vessels, which might have absolute need to entry, can be granted permission to anchor in a conveniently located space, outside of the forbidden line.
- (c) That in case of doubt or under special circumstances he can request instructions from the minister upon whom they depend.

ART. 8. To require the observance of the requirements of the articles of the present decree, those ships which, due to ignorance or purposely, violate them, the semaphore station of the fort shall hoist the international code signal calling attention to the fact with a blank shot from the battery. When this warning does not suffice to bring about execution of the orders within five minutes a solid shot is fired aimed a hundred meters ahead of the vessel, and if she still shows reluctance, the battery will open fire on her.

If urgent conditions should require it, the warning blank shot can be omitted.

ART. 9. The Minister of Marine shall have compiled and published a list of the fortified harbors and other localities to which the application of the present decree extends.

In the list there will be clearly outlined the anchorages and the coast line included in the extreme limits of the said harbors or localities, especially the semaphore stations which, with reference to the provisions of Articles 5, 6, and 8, must reply to the signals made by the vessel.

ART. 10. Royal decree No. 322, of April 21, 1895, which governs the sojourn and entry of vessels in harbors in time of war is abrogated.

(Issued at Santi Anna di Veldieri, August 20, 1909.)

Fortified Harbors and Localities into which Entry is Prohibited in Time of War without Previous Permission of the Authority.

[Article 9 of Royal Decree No. 655 of Aug. 20, 1909.]

*			
Name of the locality.	Coastal limits of the waters under observation.	Anchorages included within these limits.	Signal stations charged with the exchange of signals.
Altare Vado	From the mouth of the Car- callo to the mouth of the Sansolbio.	Spotorno, Vado, Savona.	Cape Noll.
Genoa	From the mouth of the Pran- iga to the mouth of the Recco.	Scatri Ponente, Genoa, Sturla, Bogliasco, Sori.	San Benigno.
Spezia	From the Termine Rock to the mouth of the Frigido.	Levanto, Monterosso, Portovenere, Spezia, Lerici, Bocca di Ma- gra, Marina di Avensa.	Palmaria.
Monte Argentario	From the mouth of the Ambrone to the mouth of the Chiarone.	Talmone	Ronconali. (Monte Argentario.)
Gaeta	From Capovento Tower to Giano Tower.	Gaeta, Formia	Orlando Tower.
Maddalena	From Wolf Bay to Falcon Point.	Maddalena Estuary	Guardia Vecchia, Cape Ferro.
Meesina	From the mouth of the Itala to the mouth of the Mela (Sicily).	Messina, Milassa	Fort Spuria.
	From the mouth of the Val- lone della Covaia to the mouth of the Vallonidi River (Calabria).	Reggio, Villa S. Giovanni.	Cape d'Armi.
Taranto	From the mouth of the Pa- terniscolo to the mouth of the Ostone Canal.	Taranto, Mar Grande, Mar Piccolo.	Cape S. Vito.
Anoona	From the Fortino Reef to the Marina di Falconara.	Ancona, Porto Nuovo	M. Cappuccini.
Brindisi	From the Materella Tower to Testa Tower.	Brindisi	Forte a Mare.
Porto Corsini Venice	Entrance to the canal From Port Fossone to Port Cortellaszo.	Porto Corsini	Porto Corsini. Submarine pilot tower S. Nicolo di Lido.

COLONIAL (TRIPOLI, LIBIA.)

23 October, 1913.

There are no restrictions as to the number of men-of-war allowed in port at one time; it is to be noted that only about six men-of-war drawing not over 19 feet and 4 torpedo destroyers can at present be accommodated in the harbor. Other ships would have to anchor in the roadstead which in the winter season is liable to be very rough and unsafe. After three days it is necessary to secure the permission of the

Ministry of Marine for a longer visit. Visits of men-of-war do not have to be previously announced, but the announcement of any such visit by the American Embassy to the Italian Royal Government would be appreciated.

JAPAN.

There are no restrictions in time of peace concerning the number of men-of-war under one flag that may enter any one of the open ports of Japan or her possessions, or as to the length of time they may remain in port.

The open ports are:

JAPAN.

Yokohama. Aomori ' Kobe Moji Niigata Wakamatsu Ebsiuminato Hakata Osaka Karatsu Nagasaki Kuchinotsu Hakodate Misumi Shimizu Itsuhara Odamari Sasuna Suminoy Nagoya Taketoyo Shishimi Yokkaichi Naha Ito-Saki Hamada

Shimonoseki Sakai (on sea of Japan)

Miyazu Tsuruga
Nanao Fushiki
Otaru Kushiro
Mororan Miike

Nemuro

KOREA.

Chemulpo Mokpo
Fusan Masanpho
Gensan Songehin
Chinnampho Chongchin
Seoul Sin-Wiju

Kunsan

MANCHURIA.

Dalny Port Arthur

FORMOSA.

Kelung Tamsui Ta-Kau An-Ping The naval ports of Japan are:

Yokosuka Kure Sasebo Maizuru

Ominato Hafu Bay, Oshima Islands.
Takeshiki, Tsushima Island. Bako, Pescadores Islands.
Chinkai Bay, Korea. Yong-heiung Bay, Korea.

If foreign men-of-war desire to enter any naval port, secondary naval port, or any unopened port in Japan, Formosa, Korea, or Manchuria permission must be obtained from the Imperial Government at Tokyo through diplomatic channels.

Mexico.

There are no regulations or restrictions concerning the number of men-of-war under one flag that may visit any one or all of the ports of the country at one time, but the duration of such visit would be determined by the nature and purpose thereof.

The Constitution of Mexico, Art. 72, as amended, reads: "Congress has the power. . . 111. To authorize the Executive to permit the departure of national troops out of the limits of the republic, the passage of foreign troops through the national territory, and the stay of vessels of another Power for more than one month in the waters of the republic."

NETHERLANDS.

30 October, 1909.

ARTICLE 1. Repeals decree of the 2d of February, 1893. (Official Gazette No. 46.)

ART. 2. With exception of the provision of Article 4, respecting a prior permit granted to foreign warships to enter the said sea openings and ply inland waters within the kingdom, foreign warships are allowed to enter the Netherlands territorial waters and the Netherlands waters lying there within from the sea, provided such is done by the shortest possible course and with due observance of the provision of Article 3, in order to reach the roads or harbor situated on the sea, for the purpose of anchoring there, and on condition that, inclusive of those already in the Netherlands territory, the number of warships there at one time under the same flag does not exceed three.

The provision of the first clause does not prevent the free passage through the territorial waters, in so far as such is recognized by international law.

ART. 3. In navigating the sea openings of the kingdom and inland waters, foreign warships and their sloops are not allowed to go outside the indicated channel, used by state pilots, in the interests of navigation.

The taking of observations and depths is only allowed in so far as safe navigation may demand the same.

We reserve the right for controlling the strict observance of this provision by the ship, to have the ship escorted by an officer of the royal navy or an official of the pilot service.

ART. 4. Foreign warships are forbidden, without the sanction of our Minister of Marine, to enter the hereafter-mentioned sea openings, or without such sanction to ply on the inland waters of the kingdom.

The said sea openings are those of Terschelling, Texel, Ijmuiden, Hoek van Holland, Goeree.

Under the inland waters of the kingdom are understood all inland waters situated within the sea openings.

- ART. 5. In special cases permission is given by us to deviate from the provision of Article 2 in respect to the number of ships prescribed.
- ART. 6. No foreign warships shall remain within the territory of the kingdom for a period exceeding 14 days in succession.

Any one warship may not, except with the permission of our Minister of Marine, enter for the second time the sea opening of the kingdom within a period of 30 days.

- ART. 7. The restrictive prohibitions of Articles 2, 4, and 6 do not apply:
- (a) To the warships on which, as appears from the standard or flag carried, there is a reigning prince, a member of a royal family, the president of a republic, or the chief of some mission of some foreign Power in The Netherlands or the head of a mission of some foreign power to The Netherlands nor to the accompanying warships;
- (b) To cruisers on fishing police service in the North Sea of the Powers in regard to whom the treaty of May 6, 1882 (Official Gazette 1884, No. 40) is in force;
- (c) To foreign warships, exclusively destined for religious, scientific, or humanitarian purposes;
- (d) To foreign warships in cases of need, peril by sea, or disabled. As soon as these causes have ceased to exist, as our Minister of Marine

shall decide, the provisions of Articles 2, 4 and 6 shall once more go into effect.

The exceptions to the restrictive prohibitions mentioned under the heads (a) to (c), inclusive, are only applicable toward those Powers who follow the same line of action in regard to Netherland ships of war.

ART. 8. The permit mentioned in Article 4 must, in so far as it has not been obtained through diplomatic channel, be asked for.

(a) In so far as the sea openings are concerned:

With respect to the sea opening of Terschelling through the commissioner of the pilot service at Terschelling;

With respect to the sea opening of Texel or the sea opening of Goeree, respectively, through the director and commander of the marine at Willemsoord or at Hellevoetsulius:

With respect to the sea opening of Ijmuiden or the sea opening of the Hoek van Holland, through the commander of the warship stationed there, or in case of his absence through the commander of the garrison of the fort.

(b) In so far as inland waters are concerned:

In the sea openings mentioned in Article 4, through the authorities above mentioned under (a);

In the rest of the sea openings, through the commander of the warship stationed there.

If no warship is stationed there, the permit should be asked for through the royal harbor master, in case of his absence through the commissioner of the pilot service, or, if none of these officials is on the spot, through the burgomaster.

ART. 9. The authority mentioned under Article 8 will supply to the commander of the foreign warship a copy of these regulations and a form to be drawn up by our Minister of Marine containing certain interrogations, which form should be faithfully filled in.

ART. 10. Foreign warships shall not, within the sea openings of the kingdom and the territorial waters and in general within the limits of the kingdom, take hydrographical or survey observations, have no landing drill, and without the sanction of our Minister of Marine have no firing, torpedo, or mining drill.

The crew shall go ashore unarmed; this does not apply to the officers and subalterns, in so far as the sword or poniard belonging to their uniform is concerned.

The sloops shall ply unarmed.

If desired in case of funeral ceremonies on shore, that the prohibition of the second clause of this article be suspended, the request thereto must be addressed to our Minister of Marine through the authorities mentioned in Article 8.

No capital sentences shall be executed on board of foreign warships within the sea openings and territorial waters of the kingdom.

ART. 11. Foreign warships shall respect the existing police, sanitary, and fiscal laws and by-laws and conform to all harbor regulations, in the one case as well as the other, to the same extent that warships of the royal navy are bound thereby.

ART. 12. Such foreign warships sojourning within the realm as shall be guilty of infringement of the above-mentioned provisions are liable to be ordered to leave; if necessary force may be used to compel them to do so.

ART. 13. Whenever through diplomatic channel permission to enter has been accorded the government pilots stationed outside the sea openings and harbors shall, if possible, be informed thereof.

Generally these pilots are acquainted with the contents of these provisions and whether the occasion exists or not for the replying to a salute to the Netherlands flag.

As far as possible they shall communicate these matters and, moreover, give the information requested respecting the above provisions to the commander of the foreign ship they pilot.

ART. 14. These provisions apply in times of peace and relate to foreign warships which are not engaged in warfare.

We reserve the right in time of war, peril from war, or in the maintenance of neutrality, and further in other special circumstances to limit or even entirely prohibit the admission of foreign warships to the Netherlands territorial waters and to the Netherlands waters lying there within.

Foreign warships, which in virtue of this decree are within the Netherlands territorial waters or the Netherlands waters there within, are under the obligation, within six hours in any case to make for the open sea as soon as they are in receipt of a request thereto from the Minister of Marine or from one acting for him.

(Het Loo, the 30th of October, 1909.)

PROTECTORATES.

CURACAO.

2 April, 1912.

ARTICLE I. This resolution includes among men-of-war and vessels equalized therewith all vessels:

First. Which carry the outward marks of men-of-war of their nationality (flag and command flag or split command pennant);

Second. Whose commander is in the service of the state and is charged with the command by the competent authority; and

Third. Whose crew is subjected to military laws.

ART. II. Foreign men-of-war and vessels equalized therewith may within the territory of the colony not make any survey, nor cause any landing to be made by way of practice, nor cause, without previous permission of the governor, any firing practice to take place.

The crew may not land but unarmed, with the exception of the officers and subaltern officers, as far as concerns the saber or the poniard, which appertains to their uniform—and also the boats or launches as well as their crew may not navigate otherwise than unarmed.

The preceding part of this article is not applicable in case of exigency. If it is desired for particular reasons, for instance at funeral ceremonies ashore, to deviate from the prohibition contained in the second part of this article, permission thereto can be granted at Curacao by the attorney general and at the other islands of the colony by the respective gezaghebbers.

ART. III. In case any foreign man-of-war or vessel equalized therewith may have transgressed one of the foregoing or hereafter to be enacted stipulations, the said vessel can then be ordered to retire from the territory of the colony, and, if need be, it can be compelled thereto by force.

In the latter case the naval or military authority, designated thereto by the governor, shall order obedience by a shot at about 500 meters distance alongside the vessel; subsequently by a second shot at about half the distance of the first, and, if need be, further by shots across the vessel or against the rigging, and thereafter against the hull.

ART. IV. The pilots, admitted in the colony, will make the herein mentioned commander, so much as necessary, acquainted with this resolution and with the prescriptions, further alluded to in Article V; and furthermore furnish the information desired to the commander of the foreign man-of-war or vessel equalized therewith, who may therefor apply to them.

ART. V. To men-of-war and vessels equalized therewith being in relation to states befriended with The Netherlands and which are in war, this resolution is applicable so far as there are no other prescriptions given or made known to maintain the neutrality at or after the breaking out of that war.

In case of a war, in which The Netherlands are concerned, this resolution is applicable, so far as the contrary is not stipulated.

(Order of the governor.)

DUTCH EAST INDIES.

16 October, 1905.

ARTICLE 1. In these regulations the term "foreign warships" is to be understood to mean:

- I. All warships of nations on friendly terms with The Netherlands.
- II. All ships having on board armed troops of nations on friendly. terms with The Netherlands.
- ART. 2. The highest civil authority of the respective place shall notify the naval commandant directly, if possible by telegraph, of the entering or anchoring of foreign warships in the roadsteads, channels, ports, and rivers of Dutch East India, and in the Dutch possessions outside of Java and Madoeras such civil authority shall also notify the head of the district government in case the latter does not himself constitute such civil authority.
- ART. 3. (1) The harbor master, or his representative, shall transmit to the commanding officer of every foreign warship entering or anchoring in a Dutch East Indian roadstead, channel, port, or river,
- (a) An extract from these regulations in the French, German, and English languages.
- (b) A blank form to be filled out, drawn up by the naval commandant in French, German, or English, containing questions regarding the flag, charter, name, complement, armament, port of origin, duration of voyage, length of intended stay, destination, state of health, etc.
- (2) A copy of said blank form as filled out shall be transmitted immediately to the head of the district government and to the naval commandant.

- ART. 4. (1) The crews of foreign warships are prohibited within the Dutch East Indian territory from making hydrographic or topographic surveys, from carrying out exercises in the nature of landings, and from engaging in target practice, except as provided for in Article 5.
- (2) The crews shall not carry arms when going ashore; officers and noncommissioned officers may, however, carry the side arms which form part of their respective uniforms. Ships' boats running about the territorial waters and their crews shall not carry any arms.
- (3) The preceding paragraph shall not apply in case of urgent necessity.
- (4) In case it should be desired for special reasons—e. g., for funeral ceremonies—to deviate from the provision contained in paragraph 2, permission to do so may be granted: at the district seat by the head of the district government, at other places by the highest civil authority of such place.
- ART. 5. (1) The commanding officer of a foreign warship stopping at Batavia may be permitted to engage in small-arms target practice on shore.
- (2) Application for such permission should be made by such commanding officer to the naval commandant.
- (3) If no reasons exist for refusing such permission, the naval commandant shall inform such commanding officer of the place where and the time when such exercises may be carried out, also of the number of target ranges available.
- (4) A naval officer shall, in each case, be assigned to the officer in charge of the exercises in order to give the necessary explanations regarding the target ranges and to see that the regulations are complied with.
- (5) The naval commandant shall notify the head of the district government by telephone of the fact that such permission has been granted and of the time when the target practice is to be held.
- ART. 6. Foreign warships are bound within Dutch East Indian territory to observe the existing laws and regulations of said territory.
- ART. 7. (1) In case any foreign warship should violate any of the foregoing regulations, the highest civil authority in the place may, if practicable with the consent of the government, order such ship to leave, and if necessary compel her by force to do so, after such civil authority has first conferred with the competent naval or military authorities.
 - (2) In the latter case the naval or military authority shall demand

obedience by firing a shot alongside the ship at a distance of about 500 meters, then by a second shot at about half that distance, and, if necessary, by firing above the ship and against the rigging, and finally against the ship's hull.

- ART. 8. (1) The government pilots shall be apprised of these regulations and shall be notified by the harbor master or his representative as to whether a salute to the Dutch flag can be answered, and if so, where.
- (2) So far as may be necessary, they shall inform the commanding officer of the foreign warship with regard to these points and shall also give him any additional information concerning these regulations which he may ask for.
- ART. 9. (1) As regards warships of friendly nations in a state of war these regulations are applicable in so far as no other regulations for the maintenance of neutrality shall have been issued at the time of or after the breaking out of the war.
- (2) In case of a war to which The Netherlands are a party, these regulations are applicable in so far as no regulations to the contrary shall have been issued.

(Given at Buitenzorg, October 16, 1905.) (Order of the governor.)

NICARAGUA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

NORWAY.

20 January, 1913.

1. No foreign warships, with the exception of those mentioned in paragraph 4, shall touch at a Norwegian military port or naval station without having previously obtained permission so to do from His Majesty the King or from those whom His Majesty has empowered to grant such permission.

The type and name of the ship or ships desiring to visit a Norwegian military port or naval station must be given in advance, as well as the time of the visit and the duration of the stay. Except under special permission covering exceptional cases, the duration of the stay in a military port or at a naval station shall not exceed eight days, and as

a rule not more than three warhsips can be permitted to touch at the same port at the same time. See O. N. I. 1450.

2. For the time being the following portions of the Norwegian coasts are to be considered as military ports or naval stations:

Christiania-Fjord and the waters within a line drawn from the Tonsberg buoy, the lighthouse of Faerder, the lighthouse of Torbjorsskjaer, Vikertangen on Asmalo, Askholm to the eastern coast of Skjebergkilen.

The Harbor of Christiansand with the channel inside of Frederiksholm and the lighthouses on Oxo, Gronningen and Torso;

The harbor of Bergen, together with the approaches thereto inside the line formed by Fonnes (eastern side of the Lygrefjord), the Helliso lighthouse, Tekslen (northern side of Korsfjord), and the church of the Lysekloster;

Trondhjemsfjord inside the line of the lighthouses of Agdenes and Hovdetaaen on Oerlandet:

The harbor of Bardo.

- 3. Entrance to the other harbors and anchorages of the kingdom are free to foreign warships after previous application, so long as no other dispositions are made to meet special cases. Nevertheless, not more than three such vessels belonging to the same nation may remain in the same port, nor may the duration of the stay exceed 14 days. Exceptions to the regulations contained in this paragraph can be made only after permission has been obtained through diplomatic channels.
- 4. The following vessels shall be exempt from the general regulations mentioned in paragraphs 1 and 3:
- (a) A warship having on board the head of the state of a foreign nation and the vessels accompanying such warship;
- (b) Warships in evident distress, such vessels being permitted to seek refuge, in the national harbors at any time;
- (c) Warships intended or detailed for the protection of the fisheries or for hydrographic or other scientific work.
- 5. Foreign warships calling at any Norwegian port to which a board of port authorities is assigned are bound to anchor at such place as the proper authority (harbor master) shall designate. Any permission to a foreign warship to stop at a Norwegian port or anchorage can be recalled at any time. Any foreign warship lying in a Norwegian port or at a Norwegian anchorage—even when she has the right so to do in conformity with the foregoing—must in every case weigh anchor no

matter when requested and leave the port within six hours or change her berth as directed.

- 6. Foreign warships sojourning in Norwegian ports or waters are forbidden to cruise past localities or in the vicinity of localities where batteries, fortifications, or other military installations are established, and also localities enclosed by the military authorities. Landing exercises and target practice with guns, small arms, or torpedoes may not be carried out. Enlisted men of the crew must be unarmed when they go ashore, but officers, petty officers, and cadets may wear the weapons belonging to their uniforms.
- 7. Persons belonging to foreign warships are forbidden to make, copy or publish plans, outlines, sketches, photographs or descriptions of Norwegian fortifications or establishments, etc., belonging thereto (See Art. 3 of the law regarding military secrets of August 18, 1914).
- 8. Commanding officers of foreign warships must observe the sanitary, customs, pilotage, and harbor regulations issued by the proper authorities.
- 9. The foregoing regulations shall remain in force until His Majesty the King shall decree otherwise.

(Established by royal decree of January 20, 1913.)

Rules to be Observed by Vessels on their Arrival at a Norwegian Port or within Norwegian Waters.

October 1, 1915.

1. Any vessel lying within Norwegian waters must fly its national flag upon arriving at an anchorage where a Norwegian war or patrol vessel happens to be and also wherever such a vessel is in sight. In addition any vessel within Norwegian waters must stop immediately upon being required to do so by a Norwegian war or patrol vessel through, for instance, the signal blast of a steam-whistle, the displaying of signal flags or the firing of a warning gun.

Within Norwegian waters, Norwegian war or patrol vessels have the right to search ships, their cargoes and persons on board. The officers of the visited ship shall readily acquiesce in the inspection, furnish such information of interest to the military authorities as they may be able to impart, and also shall be bound to obey such instructions as may be given them respecting their conduct and subsequent sailing course.

2. All infringements of the above mentioned requirements shall be

tried as provided by Article 339 (2) of the Civil Penal Code of May 22, 1902.

3. The requirements of section 1 shall take effect at once.

PANAMA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

PERU.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

PORTUGAL.

There are no restrictions as to the number of foreign men-of-war under one flag that may visit a Portuguese port at one time or as to the length of time they may remain in the port.

It is customary to give notice of an intended visit beforehand through diplomatic channels.

New Regulations Governing the Entry of Vessels into the Port of Lisbon.

No vessel desiring to enter the port of Lisbon or simply navigating along the coast, except Portuguese fishing vessels which do not draw more than seven feet, may enter the zone to the east of meridian 9° 25′ W. and north of parallel 38° 33′ 45′ N. without a pilot on board.

Entrance into the port of Lisbon is positively forbidden between sunset and sunrise or when there is a fog which makes it impossible to see beyond two miles.

Any war or merchant ship, with or without a pilot on board, attempting to enter during the night by any channel whatever will be considered an enemy. The fortress of St. Julian shall make known its proximity by a warning shot.

Every ship desiring to enter the Tagus must approach the citadel of Cascais in order to pick up a pilot, and must announce by signals or radio her name and whence bound, as well as answer promptly all questions put to her, hoisting such signals and distinguishing marks, as the pilot may indicate.

It is not permitted to pass through any channel without authority given by semaphore, and by a signal known only to the pilot.

Exempt from this rule are Portuguese fishing vessels, whether steam or sailing, whose draft does not exceed seven feet, but they must anchor or lie to close to the navy guard ship.

A ship to which entrance has been refused by semaphore by hoisting the signal N, must immediately put to sea, or anchor, in order that the captaincy or the navy guard ship may proceed to inspect her, in case her captain has requested an inspection.

When a ship has been granted permission to enter, she must follow the orders given by the pilot, keeping hoisted her name and the special distinguishing signal indicated by the pilot, and must slow down at St. Julian until the same signal is hoisted to indicate that she may continue on her way.

Inside and outside the bar, as far as the anchorage, she must promptly obey any orders given to her by the naval vessels on guard duty.

Any war or merchant ship attempting to enter during the day by whatever channel, failing in any way to have fulfilled the above rules, whether with a pilot on board or not, will be treated as an enemy.

When through conditions of the weather or any other unforeseen cause, the pilot's boat is not able to remain at its post, vessels must nevertheless approach the citadel, which will give them permission to enter, but they must wait until a vessel of the state comes out to convoy them into port, being in this case subject to inspection after they have passed St. Julian.

ROUMANIA.

22 November, 1912.

ARTICLE 1. It is forbidden to foreign warships to enter Roumanian ports or to cruise in Roumanian waters without notice having previously been given through diplomatic channels.

ART. 2. The stay of foreign warships in Roumanian ports shall not exceed a duration of 10 consecutive days.

A new permit cannot be issued for the same ship until after the expiration of 30 days, reckoning from the date of the last departure from a Roumanian port.

As a rule, not more than one warship of the same foreign Power shall be permitted to be present in any one of the national harbors at the same time, and only as an exception will permission be granted for a combination of several foreign warships to visit the seaports.

ART. 3. The limitations imposed under Article 1 shall not apply:

- (a) To the station ships at the mouths of the Danube belonging to the powers represented in the European commission;
- (b) To warships having on board the head of a nation, a member of a reigning family, or an individual in charge of a mission having his credentials from the head of a nation, together with the warships which may accompany such persons;
- (c) To foreign warships in distress and those which have been overtaken by stormy weather or have suffered damages; nevertheless, as soon as the occasion no longer exists, the provisions of Article 1 shall immediately come into force again.
- ART. 4. Foreign warships entering Roumanian waters and ports will be met by a pilot, who will be sent to them by the captain of the port in question, and who will conduct them to the place where they are to anchor and indicate the same to them.
- ART. 5. Foreign warships are absolutely forbidden to make hydrographic surveys, launch torpedoes, or execute a death sentence within the ports and territorial waters of Roumania.

Nevertheless it will be permitted to make such surveys and measurements as are required for safety in navigating.

An understanding must previously be had with the captain of the port for any work under water, such as an examination of the ship's hull, screws, anchor, etc., whether with or without the cooperation of the divers.

Enlisted men of the crew must be unarmed when they go ashore. Officers may wear such arms as form a part of their uniform.

Boats which ply within a port or within the territorial waters must be unarmed.

An exception may be made to the provisions of paragraph 4 of the present article for the landing of the crew on the occasion of some ceremony or a funeral, but only with permission from the local military authorities.

ART. 6. Foreign warships are forbidden to disembark any person for any reason whatsoever during their voyage without informing the military authorities of the fact.

ART. 7. Foreign warships, as well as the national warships, must observe all police, sanitary, fiscal, and harbor laws and regulations.

To this end the captain of the port shall transmit to the commanding officers of warships upon their arrival a copy of the more important articles of these regulations.

ART. 8. The provisions of this decree shall apply in time of peace as well as in time of war to the warships of such foreign nations as are not in a state of war.

In the case of a war, a mobilization due to the danger of war for the purpose of preserving neutrality, or for any other reason, the approach of foreign warships to or entrance into Roumanian waters can be restricted or entirely forbidden.

Foreign warships which have been given permission to enter Roumanian waters shall, in case the above-mentioned circumstances arise, take their departure six hours after the receipt of a notification from the Minister of War or in his name.

(Delivered at Bucarest, Nov. 22, 1912.)

Russia.

January 5, 1914, December 23, 1913.

ARTICLE 1. As regards visits by foreign warships, Russian ports and waters are divided into three classes, to-wit: 1. Open; 2. Conditionally open; 3. Closed.

- ART. 2. By open ports and waters shall be understood all Russian ports and waters with the exception of those mentioned under Article 3 and those which have been closed by special order.
 - ART. 3. The conditionally open ports and waters are:
- (a) In the Baltic: Port Kaiser Alexander III, Riga, Libau, Dünamünde, Reval, Helsingfors, Sweaborg, Kronstadt and St. Petersburg; the waters of (1) Mohnsund from Worms to Werder including the passages of Nukkö-Worms and Sölasund; (2) along the coast of the Gulf of Finland from Hango to Stirs-Udde, and (3) the Abo-Aland Skären.
- (b) In the Black Sea: Sebastopol, Ialta, Kertch, Batu, the Dniester River, the Dnieper Bay Channel, the Djarilagatch Bay, the stretch of water from Cape Lukul to Cape Aja, the Straits of Kertch and the Sea of Azof.
- (c) In the Pacific: Vladivostock and the waters of Peter the Great Bay, Posiette Bay, and the Bays of America, Nikolaievsk on the Amur and de Castri.

- ART. 4. Any port or waters can, by special order of the Minister of Marine, which order shall be made publicly known, be declared closed so far as visits by foreign warships are concerned.
- ART. 5. No special permission is required for visits by foreign warships to the open ports and waters of Russia; the Imperial Government must, however, be duly informed through diplomatic channels of the arrival of such ships.
- ART. 6. Foreign warships desiring to visit the conditionally open ports and waters mentioned under Article 3 must first obtain permission from the Russian Government through diplomatic channels. Requests for such permission must distinctly specify the ports or waters that it is desired to visit and mention the ships together with the time and duration of their proposed visit.
- ART. 7. Entrance of foreign warships into conditionally open ports and waters will be permitted only when duly authorized by the Imperial Government and between sunrise and sunset.
 - ART. 8. The above regulations (Articles 5, 6 and 7) do not apply to:
- (a) Ships having on board crowned heads, members of reigning houses, presidents of republics or their suites, or duly accredited ambassadors and envoys to the court of His Majesty the Emperor, and
- (b) Ships forced to seek refuge in Russian ports on account of disaster or damage.
- ART. 9. Foreign warships admitted to Russian ports and waters must anchor at the place indicated by the local authorities and must observe the regulations regarding health, order, safety, the use of radio telegraphy, and any other local ordinances.
- ART. 10. Foreign warships sojourning in open or conditionally open Russian ports and waters are unconditionally bound to put to sea within ten hours after the receipt of a request to this effect from the Minister of Marine.
 - ART. 11. The privileges accorded in the foregoing regulations may be restricted and modified in the case of warships belonging to nations which subject Russian warships to less favorable conditions.

SALVADOR.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

SANTO DOMINGO.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

SPAIN.

There are no restrictions as to the number of men-of-war under one flag that may visit any port of Spain at one time or as to the length of time they may remain in one port; but it is customary to give notice of the intended visit of a single ship or squadron through diplomatic channels.

SWEDEN.

20 December, 1912.

ARTICLE 1. Foreign warships may not, without special permission, have access to the Swedish naval ports, Stockholm, Gothenburg, Karlskrona, and Farosund, but the proper military authorities in these ports may, even if permission should not have been obtained beforehand, grant access to vessels intended for the supervision of fishing or for scientific purposes.

When, in accordance with special regulations, access to certain zones within Swedish territorial waters shall be forbidden to the warships of a belligerent Power, the access to such zones shall be subject to the same regulations as naval ports with regard to other foreign warships.

To other Swedish ports or roadsteads foreign warships may have access with the restriction that not more than three such vessels belonging to the same nation may be allowed to remain simultaneously in the same port or the same roadstead and that a visit must not exceed fourteen days; a notification of the visit must be made through diplomatic channels, if possible, at least eight days before it is intended to take place.

ART. 2. The zones assigned to the various naval ports are:

For Stockholm: Partly the area within a line which, drawn from the mainland at S. Rorvik, west of Simpnasklubb lighthouse goes through the lighthouses at Simpnasklubb, Soderarm, Gronskar, Hufvudskar, Roko, and across the promontory of Yxelo to the mainland, and partly the area within a line from the south point of Jarflotta through Landsort to Ledskar.

For Gothenburg: The area within a line which, drawn from Korshamn on the mainland, goes through the Inre Ledskar beacon, the signal mast of Torrboskar, the Vinga lighthouse, the cairn of Yttre Tistlarna and the southwestern point of Saro.

For Karlskrona: The area within a line which, drawn from Torhamn Point goes past Utlangan lighthouse to Gjo Point on the mainland.

For Farosund: The area within a line at the north entrance from the point at Hallegrund over the north point of Falholmen to the coast of Fottland at Halludden, west of the above-mentioned islet and within a line at the south entrance from Ryssnas along the eastern shore of Bungeor to the northwestern point of Skenholmen and to the coast of Gottland at Albyref, west of Skenholmen.

- ART. 3. Foreign warships which, after application either through diplomatic channels or otherwise, have obtained permission to visit a Swedish naval port or any zone subject to the same restrictions respecting the choice of anchorage shall observe the orders that may or shall be issued by the highest military authorities on the spot.
- ART. 4. Foreign warships visiting a Swedish port or Swedish territorial waters shall, when the King so decides, leave the port or Swedish territorial waters and put to sea within six hours after having been directed to do so by the highest local authorities, military or civil, even if the time stated in Article 1 or other period allowed for a vessel's visit at the place should not be up.
- ART. 5. The officers and crew of a foreign warship are not permitted to draw maps or undertake any measurements or soundings in Swedish territorial waters with the exception of such soundings as may be necessary for the navigation and safety of the vessel.

Exercises in landing and shooting must not be made, neither may armed men disembark without special permission.

ART. 6. Foreign warships in Swedish inner territorial waters must not follow any other route but that of the pilots, and the officers in command of such vessels are bound, except when otherwise provided, on such occasions to employ licensed pilots. By inner territorial waters it is meant harbors, entrances to harbors, roadsteads, and bays, as well as waters situated between and inside of islands, islets, and rocks, which are not constantly being washed over by the sea, always provided, however, that in Oresund (the sound) only the harbors and entrances of harbors there are to be considered as inner territorial waters.

Commanders of foreign warships within Swedish territorial waters

are bound to observe the regulations for health, pilotage, customs, and ports, as well as the police regulations given by the proper authorities.

ART. 7. The provisions in Article 1 do not apply to a vessel on board of which there is a foreign sovereign or his official representative, or to a vessel escorting such a vessel, nor to a vessel in serious distress.

ART. 8. Concerning access of warships of belligerent Powers into Swedish ports and roadsteads and to other Swedish territorial waters there are special regulations in force.

This ordinance shall come into force immediately when issued, from which date the royal ordinance of April 22, 1904, concerning the access of foreign warships to Swedish ports and waters, shall cease to be valid. (At the Palace of Stockholm, *December 20*, 1912.)

ADDITIONAL PROVISION 1

Submarines of belligerent Powers are forbidden to navigate or sojourn within the Swedish territorial waters at less than three nautical miles from the mainland or the islet or reef most distant from the Swedish coast that is not constantly under water, with the exception, however, of the sea highway in the Sund lying between the parallels of latitude drawn across the Viken lighthouse in the north (N. Lat. 56° 8′ 7) and the Klagshamm lighthouse in the south (Lat. N. 55° 31′ 2). The foregoing provisions shall not be applicable to cases when a submarine should be compelled by the condition of the sea or on account of damages to enter the forbidden waters; provided, however, that it shall keep on the surface and display the flag of its nation in the said waters. As soon as the cause for its entering the forbidden waters shall have ceased the submarine shall leave the said waters in as short a time as possible.

TURKEY.

There are no regulations restricting the number of men-of-war under one flag that may visit any port of Turkey, except those ports on the Dardanelles and the Black Sea.

The latter ports are closed to men-of-war by treaty stipulations, and men-of-war are only allowed to visit Constantinople by special permission obtained through diplomatic channels.

¹ Notified to the Department of State of the United States by the Netherlands Legation in a note dated March 23, 1916.

UNITED KINGDOM.

December, 1912.

1. The term "ship of war" is to be understood as including all ships designated as such in the accepted sense of the term and also auxiliary vessels of all descriptions.

No special permission is necessary to enable foreign ships of war, up to a total of three vessels, to visit fortified or unfortified ports, harbors, roadsteads, estuaries, or navigable rivers in the United Kingdom.

Notice that a visit is in contemplation should, however, invariably be forwarded through the usual diplomatic channels so as to arrive, should circumstances permit of this, not less than seven days prior to the commencement of the proposed visit, and unless such notice has been acknowledged no foreign ships of war may enter or remain in the fortified or unfortified ports, harbors, roadsteads, estuaries, or navigable rivers in the United Kingdom.

- 2. As a general rule, not more than a total of three foreign ships of war of the same nation may visit or remain in a fortified or unfortified port, harbor, roadstead, estuary, or navigable river of the United Kingdom at the same time. Special permission should be obtained through the ordinary diplomatic channels if it be desired that this number should be exceeded.
 - 3. The above regulations do not apply:
- (a) To ships of war and vessels on board of which are embarked sovereigns, members of the sovereign's family, presidents of republics or their suites, or ambassadors or envoys to the court of His Majesty the King.
- (b) To ships or vessels which are obliged by reason of damage sustained, perils of the sea, or other unforeseen causes to enter a British harbor.
- (c) To vessels engaged in the superintendence of the fisheries in the North Sea in accordance with the North Sea fisheries convention.
- 4. At the Nore, Dover, Portsmouth, Plymouth, Queenstown, Brehaven, Milford Haven, Portland, and Rosyth the right of assigning anchorage berths to foreign ships of war and of directing them to shift berth, should the same become necessary, is vested solely in the commander in chief or senior naval officer of the port.

At all other ports, harbors, roadsteads, estuaries, and navigable rivers

where there is any constituted harbor authority such right is vested in the harbor master, acting in conjunction with the coast guard or with the senior naval officer, if there be any, of His Majesty's ships present.

- 5. Foreign ships of war are under no obligation to take a pilot when approaching ports, harbors, roadsteads, estuaries, and navigable rivers of the United Kingdom; but within the zone of the defenses of fortified or limits of unfortified ports, harbors, roadsteads, estuaries, and navigable rivers they are subject to the regulations of the port, if any.
- 6. Should a foreign ship of war fail to comply with the regulations of the port, the attention of her commanding officer will first be called thereto by the harbor master or other authority, as above specified, and explicit observance of these regulations will be requested.

Should this course fail, the foreign ship of war may at once be requested to leave the harbor.

7. Upon entering any of the ports mentioned in paragraph 4 or any other port or harbor, etc., where one of His Majesty's ships is present, foreign ships of war will be boarded by an officer sent by the naval commander in chief or senior naval officer, who will offer the commanding officer the courtesy of the port.

The officer will acquaint the commanding officer with the anchoring berth that has been allotted to his ship and will obtain information as to the object and the proposed duration of the visit, the name of the commanding officer, and the information it is usual to obtain upon such occasions.

- 8. Should the officer sent to welcome the foreign ship of war arrive on board after she has already anchored or made fast, the prescribed notification and inquiries will nevertheless be made and the confirmation of the anchoring berth taken up or the assignation of another will also be carried out.
- 9. At other ports or places where there are none of His Majesty's ships present the above duties will be carried out by the harbor master or his representative, or, if there is no harbor master, by the coast guard.

At ports, etc., where there is no harbor master nor coast-guard station the foreign ship of war will be boarded by the customs officers.

(December, 1912.)

[The above regulations refer only to ports in the United Kingdom.]

URUGUAY.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

VENEZUELA.

There are no restrictions as to the number of men-of-war under one flag that may visit any port at one time, nor as to the duration of such visit. There are no closed ports in this country.

CORRESPONDENCE BETWEEN MEXICO AND THE UNITED STATES REGARDING THE AMERICAN PUNITIVE EXPEDITION, 1916.*

Special Representative Carothers to the Secretary of State.

[Telegram.]

EL Paso, Tex., March 9, 1916.

Early this morning Villa attacked American garrison at Columbus, setting fire to several buildings and killing several American soldiers. Twenty-three Villistas were killed. It is believed Villa led attack in person. I leave for Columbus this afternoon, arriving there 4 p. m. Address care Col. Slocum, commander Thirteenth Cavalry. American troops have crossed border in pursuit of Villa.

CAROTHERS.

Collector Cobb to the Secretary of State.

[Telegram.]

EL PASO, TEX., March 9, 1916.

Following from Deputy Collector, Columbus, N. Mex.:

Columbus attacked this morning, 4.30 o'clock. Citizens murdered. Repulsed about 6 o'clock. Town partly burned. They have retreated to west. Unable say how many were killed. Custom force and families O. K.

Department of Justice informed that between four and five hundred Villa troops attack Columbus, N. Mex., about 4.30. Villa probably in charge. Three American soldiers killed and several injured; also killed four civilians and wounded four. Several of attacking party killed and wounded by our forces. Attacking party also burned depot and principal buildings in Columbus. United States soldiers now pursuing attacking parties across the line into Mexico. No prisoners reported taken alive.

* Printed from official texts furnished by the Department of State of the United States.

The Secretary of State to Consul Silliman. 1. 2

[Telegram.]

DEPARTMENT OF STATE, Washington, March 9, 1916.

Official reports just received from El Paso state that Gen. Villa, with several hundred men, early this morning attacked American garrison at Columbus, N. Mex., setting fire to principal buildings in town and killing a number of American soldiers and civilians. Other official reports from El Paso state that Villa's forces were well known to be in the Casas Grandes district several days ago, but that the forces of the de facto government were said to be insufficient to pursue them; also that, about that time, the Mexican consul at El Paso requested Gen. Carranza to furnish additional troops for the State of Chihuahua.

Convey foregoing to Gen. Carranza for his information and advise him that this government is suspending judgment until further facts can be learned, but you may say to him that this appears to be the most serious situation which has confronted this government during the entire period of Mexican unrest, and that it is expected that he will do everything in his power to pursue, capture, and exterminate this lawless element which is now proceeding westward from Columbus.

LANSING.

The Secretary of State to all American consular officers in Mexico.⁸
[Telegram.]

DEPARTMENT OF STATE, Washington, March 10, 1916.

The following statement has just been given to the press by the President:

An adequate force will be sent at once in pursuit of Villa with the single object of capturing him and putting a stop to his forays. This can and will be done in entirely friendly aid of the constituted authorities in Mexico and with scrupulous respect for the sovereignty of that republic.

LANSING.

¹ Addressed, care American consul at Guadalajara.

³ Same to Charles Parker, representing American Interests, Mexico City.

² Repeated to Charles Parker, representing American interests, Mexico City, and to Consul Hanna at Monterey, with instructions to hand copy to Consul General Rodgers upon his arrival at Monterey.

Consul Silliman to the Secretary of State.

[Telegram.]

GUADALAJARA, MEXICO, March 10, 1916.

Following just received from Secretary Acuna, which is transmitted in Spanish immediately to save time:

IRAPUTO, March 10, 11 p. m.

Number 51, Irapuato, 10. Guadalajara.

Mr. Silliman: Foreign Secretary further request confirmed at midnight. Will advise result this latter. Am advised recent development will urge news be suppressed in republic with view preventing demonstration. Reply follows:

[Translation.]

In due reply to your polite note dated yesterday and forwarded to-day by Mr. John W. Belt, I have the honor to inform you that upon my making the said note known to the Citizen First Chief of the Constitutionalist Army in Charge of the Executive Power of the Nation, he directed me to say to you, so that you may be pleased so to report to the Department of State of the Government of the United States, that he is grieved to hear (* * *)1 the town of Columbus, N. Mex., on the occasion of the attack it suffered yesterday from the bandits led by Francisco Villa, that, although there has been in the State of Chihuahua a sufficient force to restore order and afford guarantees to nationals and foreigners since Francisco Villa began operations in the mountains of that State, on the request of the governor of the State and of the constitutional consul at El Paso, Tex., the First Chief issued in time orders for 2,000 men under command of Gen. Luis Gutierrez to sally forth under instructions to pursue the bandits who have just crossed into the territory of the United States, which they were no doubt compelled to do when persistently pursued by the said forces. The deplorable incident that has just occurred bears some resemblance to the raids effected by Indians from the reservations of the Government of the United States into the States of Sonora and Chihuahua. The Sonora raid took place about the year 1880, when the Indian Geronimo, who died a few years ago at Fort Mount, Ala., leading a large horde, invaded a community in the north of the State of Sonora and committed a number of murders and depredations, taking the lives and property of Mexican families, until after a long and persistent pursuit by Mexican and American forces the band of malefactors was annihilated and its chief captured. The invasion of Chilhuhua led by the Indian Victor, followed by 800 Indians, took place from 1884 to 1886. The bands of foragers then went as far as the town of Tejolochic and Tres Castillos, very near the capital of Chihuahua, also committing many crimes; and at the first actual battle they had with the Mexican forces they scattered after losing their chief. In both these cases an agreement between the Governments of the United States and Mexico provided that armed forces of either country could freely cross into the territory of the other to pursue and chastise those

¹ Omission.

bands. Bearing in mind those precedents and the happy results to both countries yielded by the agreement above referred to, the government over which the Citizen First Chief presides, desiring to exterminate in as little time as possible the horde led by Francisco Villa, who was recently outlawed, to capture and inflict upon him the penalty of the law, applies through you, honorable Mr. Confidential Agent, to the Government of the United States and asks the permission necessary to let Mexican forces cross into American territory in pursuit of those bandits, acknowledging due reciprocity in regard to forces of the United States crossing into Mexican territory if the raid effected at Columbus should unfortunately be repeated at any other point of the border. The Government of Mexico would highly appreciate a prompt and favorable decision from the Government of the United States.

Be pleased, etc.,

ACUNA,
In charge of the Department
of Foreign Relations.
SILLIMAN

The Secretary of State to Consul Silliman.1

[Telegram.]

DEPARTMENT OF STATE, Washington, March 13, 1916.

Your March 10, midnight.

You are instructed to reply as follows to Secretary Acuna's note of March 10:

The Government of the United States has received the courteous note of Senor Acuna and has read with satisfaction his suggestion for reciprocal privileges to the American and Mexican authorities in the pursuit and apprehension of outlaws who infest their respective territories lying along the international boundary and who are a constant menace to the lives and property of residents of that region.

The Government of the United States, in view of the unusual state of affairs which has existed for some time along the international boundary and earnestly desiring to cooperate with the de facto Government of Mexico to suppress this state of lawlessness, of which the recent attack on Columbus, N. Mex., is a deplorable example, and to insure peace and order in the regions contiguous to the boundary between the two republics, readily grants permission for military forces of the de facto Government of Mexico to cross the international boundary in pursuit of lawless bands of armed men who have entered Mexico from the United States, committed outrages on Mexican soil, and fled into the United States, on the understanding that the de

¹ Same to John W. Belt, Queretaro.

facto Government of Mexico grants the reciprocal privilege that the military forces of the United States may pursue across the international boundary into Mexican territory lawless bands of armed men who have entered the United States from Mexico, committed outrages on American soil, and fled into Mexico.

The Government of the United States understands that in view of its agreement to this reciprocal arrangement proposed by the *de facto* government, the arrangement is now complete and in force, and the reciprocal privileges thereunder may accordingly be exercised by either government without further interchange of views.

It is a matter of sincere gratification to the Government of the United States that the *de facto* Government of Mexico has evinced so cordial and friendly a spirit of coöperation in the efforts of the authorities of the United States to apprehend and punish the bands of outlaws who seek refuge beyond the international boundary in the erroneous belief that the constituted authorities will resent any pursuit across the boundary by the forces of the government whose citizens have suffered by the crimes of the fugitives.

With the same spirit of cordial friendship the Government of the United States will exercise the privilege granted by the *de facto* Government of Mexico in the hope and confident expectation that by their mutual efforts lawlessness will be eradicated and peace and order maintained in the territories of the United States and Mexico contiguous to the international boundary.

LANSING.

Mr. Belt to the Secretary of State.

[Telegram Extract.]

QUERETARO, MEXICO, March 13, 1916.

Department's March 13, 3 p. m.

Reply of United States to *de facto* government's note of March 10, Columbus border situation, received at 5 this afternoon. Personally presented this important communication orally and in writing to Foreign Secretary Acuna at 5.30 p.m. He read same in my presence and afterwards stated:

I am pleased to receive a reply of this character from the Government of the United States. It will relieve the very delicate situation that has developed owing to the Columbus affair. I will immediately transmit this reply to the Chief Executive, and am of the opinion that there will be a reply to this courteous note expressing appreciation of same. In this event I shall deliver it to you immediately for transmittal to the Government of the United States.

JOHN W. BELT.

Statement for the press by the Secretary of State.

DEPARTMENT OF STATE. Washington, March 13, 1916.

In order to remove any apprehensions that may exist either in the United States or in Mexico, the President has authorized me to give in his name the public assurance that the military operations now in contemplation by this government will be scrupulously confined to the object already announced, and that in no circumstances will they be suffered to trench in any degree upon the sovereignty of Mexico or develop into intervention of any kind in the internal affairs of our sister republic. On the contrary, what is now being done is deliberately intended to preclude the possibility of intervention.

ROBERT LANSING.

The Acting Secretary of State to all American consular officers in Mexico and to Mr. Parker at Mexico City.

[Telegram.]

DEPARTMENT OF STATE, Washington, March 14, 1916.

Department's March 10, 6 p. m.

This government's expedition will shortly enter Mexico with sole object of pursuing and capturing Villa and his band for the outrage committed at Columbus, N. Mex., on March 9, when at least 16 Americans were killed, principal buildings burned, etc. Upon the determination of this government to send a punitive expedition into Mexico becoming known, the de facto government proposed that reciprocal privileges be granted should armed bands from the American side raid Mexican territory. Department's representative near Gen. Carranza last night delivered a note to the Mexican Foreign Secretary, in response to the proposal of the de facto government, granting permission for Mexican soldiers to cross international boundary in pursuit of lawless bands who may enter Mexico from the United States, commit outrages in Mexican territory, and thereafter return to the United States. After presentation note, Foreign Secretary informally stated he was pleased with same, and predicted that it would relieve delicate situation developed by Columbus affair. Polk.

The Acting Secretary of State to Special Representative Rodgers.

[Telegram]

DEPARTMENT OF STATE, Washington, March 18, 1916.

Request Gen. Carranza to issue necessary orders to appropriate Chihuahua authorities to permit this government to transport supplies for American troops now in pursuit of Villa and his band over the Northwestern Railway from Juarez to Casas Grandes or its vicinity. In making the request you will remind Gen. Carranza of this government's courtesy to him in repeatedly allowing his forces to use the railroads of this country. Telegraph reply as quickly as possible.

Polk.

The Confidential Agent of the de facto Government of Mexico to the Secretary of State.

CONFIDENTIAL AGENCY OF THE CONSTITUTIONALIST GOVERNMENT OF MEXICO.

Washington, March 18, 1916.

Mr. Secretary: Reiterating the conversation I had to-day with Mr. Polk, Acting Secretary of State, in regard to the crossing of troops into Mexican territory. I am directed by my government to bring to your excellency's attention that the Chief Executive of Mexico is in receipt of reliable information that without the knowledge of, or advice to the nearest civil or military authorities, and without any intelligence between the Government of the United States and my government, an expedition described as punitive, for the purpose of pursuing Villa and his band, has entered Mexican territory via Palomas. Complying with the above instructions, I am directed to apprise your excellency of the above facts and to say that my government, upholding, on its part, the propositions contained in its note of the 10th instant, is of the opinion that the terms and conditions of an agreement which should be formally entered into between both countries have not been fixed concerning the crossing of troops, in order that one government and the other should feel authorized to send an expedition. The consent expressed by my government in regard to the crossing of armed troops

over our frontier line is being erroneously understood by taking it for granted that the crossing of a military expedition in pursuit of Villa has been permitted, and, furthermore, by the intent to have troops move over the line of the Northwestern Railway of Mexico, which runs between Ciudad Juarez and the southern part of the State of Chihuahua, inasmuch as the above-mentioned note states with perfect clearness that this government is disposed to act within the terms of strict reciprocity, if, unfortunately, from now on, any incursions similar to the one at Columbus or of any other character and at any other point of the line should occur: therefore, the above mentioned note should and must not be understood as tolerating or permitting any expeditions into the national territory. I am also instructed to make it clear to your excellency that the Mexican Government can not authorize right of the crossing into our territory of expeditions of American forces before the terms of the above mutual agreement are definitely and concisely fixed; and I am instructed to assure you, Mr. Secretary. that my government is studying with the urgency the case demands the propositions of the agreement to be submitted in due form, and as early as possible, so that it may be determined for once and at all times the matter in question.

With the assurances, etc.

E. ARREDONDO.

The Acting Secretary of State to the Confidential Agent of the de facto Government of Mexico.

DEPARTMENT OF STATE, Washington, March 19, 1916.

My Dear Mr. Arredondo: I beg to acknowledge your letter of March 18, 1916, inclosing a translation of the substance of the message from the Secretary for Foreign Affairs of Mexico, which you were good enough to read to me yesterday afternoon.

As I stated to you, it is a matter of sincere regret that there should have been any misunderstanding as to the attitude of Gen. Carranza in connection with the crossing of the border by United States troops while in pursuit of Villa. It was the impression of this Department,

as a result of the messages exchanged between this government and the de facto Government of Mexico, that your government fully understood and acquiesced in the arrangement proposed by the Minister of Foreign Relations, Señor Acuña, in his note of March 10, and accepted by this government in our note dated March 13, presented by Special Representative Silliman, whereby the troops of either government could. under certain conditions, pursue bandits into the territory of the other. With that understanding troops of the United States Government were directed to pursue our common enemy, as it was realized that no time was to be lost if the pursuit was to be effective. While our military commanders have been given explicit instructions to scrupulously respect the sovereignty of the Mexican Government, and we believe there will be no possibility of friction, yet this government would be glad to receive any suggestions your government may care to make as to the terms of a definite agreement to cover operation of troops either in our country or your country under these particular conditions.

I am, etc.,

FRANK L. POLK.

The Confidential Agent of the de facto Government of Mexico to the Secretary of State.

Confidential Agency of the Constitutionalist Government of Mexico, Washington, March 19, 1916.

Mr. Secretary: I am directed by my government to apprise your excellency that the office of the First Chief has been informed that the American forces now in Mexican territory intend to occupy the town of Casas Grandes, State of Chihuahua, and to say to you formally that as long as there is no agreement concerning the form in which bandits should be pursued along the boundary line, my government can not permit the occupation of Mexican towns by American forces, much less such towns as are occupied by our own troops, as this might give rise to frequent conflicts.

With the assurances, etc.

E. ARREDONDO.

Special Representative Rodgers to the Secretary of State.

[Telegram.]

Queretaro, Mexico, March 19, 1916.

Ten to-night sub-Secretary of State for Foreign Affairs called and presented reply to Department's March 18, 6 p. m., use of railways Chihuahua, transportation supplies, troops, requested transmission, the text of the note as follows:

Queretaro, March 19, 1916.

Having reported to the Citizen First Chief of the Constitutionalist Army in Charge of the Executive Power of the Union with your note of to-day's date, in which you quote the text of a message received by you yesterday from the Department of State of the United States, by order of the said high functionary, I beg you to transmit to the said department what follows by way of reply:

The note referred to has caused great surprise to the Mexican Government, for it had not until now received any official notice from the Government of the United States that American troops had crossed into Mexican territory or that they were at or near Casas Grandes, this government's surprise being made the greater from the fact that negotiations through the proper channels and occasioned by the Columbus incident are under way at this very moment to perfect agreements as to the terms and conditions of the convention that is to govern the passage of troops from one to the other country in the sense of the spirit of the note dated the 10th of this month addressed by the government over which the Citizen First Chief presides to the Government of the United States of America. The Mexican Government can not but wonder at the fact that the said troops should have crossed the boundary line and entered our territory without previous agreement, official communication, or notice of any kind and reached, as stated in the note referred to a place which, as is Casas Grandes, is much more distant from the boundary line than any other point which under previous treaties have been the extreme limit in cases of pursuits. To the end of maintaining unalterable the good relations that have always existed between the United States and Mexico, the Citizen First Chief of the Constitutionalist Army in Charge of the Executive Power of the Union deems it necessary, in order to act with full knowledge of the facts of the case in a matter of such great moment, that the Department of State of the United States of the North be pleased to furnish the government over which he presides with information as to the circumstances under which the passage of American troops into Mexican territory was affected at El Paso, their number, the branch of the service to which they belong, the name of the officer in command, the place where they are, and the causes which occasioned their crossing.

Hoping that you will be pleased to transmit the foregoing to the Department of State of the United States and impress it with the necessity of its prompt answer to the points set forth in the note above quoted, permit me to avail, etc.

AGUILAR,
Secretary of Relations.
RODGERS.

The Acting Secretary of State to Special Representative Rodgers.

[Telegram.]

DEPARTMENT OF STATE, Washington, March 20, 1916.

Your March 19, 12 midnight.

You will express to Gen. Carranza in the terms of deepest consideration and friendly assurance the regret felt by this government over any apprehension he may feel or misunderstanding he may labor under in relation to the specific object of the expedition, the single purpose of which is to pursue and capture Villa, unless his prior capture should be effected by the forces of the de facto government. You will give Gen. Carranza every assurance that immediately upon the accomplishment of this purpose the forces of this government will retire from Mexican territory forthwith. From the very inception of the expedition our troops were given explicit instructions to scrupulously refrain from any act that might cause the slighest friction or the least criticism, and in future operations, in so far as possible, to conform with the suggestions of the de facto government; and this government confidently assures Gen. Carranza that our forces will not deviate from the directions given them. Therefore, as far as this government or its troops are concerned, there is no cause for the slightest misapprehension.

You will also say to Gen. Carranza that Señor Arredondo to-day submitted the draft for a reciprocal arrangement suggested telegraphically by the Minister of Foreign Relations; that this government agrees in principle; and that for better adaptability some modifications are now being given urgent consideration. This government realizes that such an arrangement will have an immediate and helpful effect and great influence upon the cordial relations of the two governments by terminating border outrages and abating frontier irritation.

Gen. Carranza should be informed that in the present instance, however, this government, actuated solely by the intention of furthering the amicable relations now existing between the two governments, accepted, without any hesitation, the proposal made by the Minister of Foreign Affairs, through Mr. Silliman, on March 10. The only hope of success depended upon quick action in the effort to capture Villa, who promises to be a constant menace to the friendship of our countries.

The troops which were sent across the border are under the command of Gen. John Pershing and consist of cavalry, infantry, and artillery. Their location at the present time can not be stated with preciseness, but it is believed to be in the neighborhood of San Miguel. From all the advices received by the department, the expedition, in accordance with instructions, appears to be cooperating with the forces of the de facto government, and they are apparently working together in earnest and friendly endeavor to accomplish the ends so greatly to be desired by our governments.

You are directed to request Gen. Carranza to issue instructions to the Chihuahua authorities, directing them to give their full cooperation to the expedition. You may also say to Gen. Carranza that the department will telegraph within the next 24 hours, after consultation with Mr. Arredondo, a suggestion for greater cooperation of the two forces in the present expedition.

Polk.

Special Representative Rodgers to the Secretary of State.

[Telegram.]

Queretaro, Mexico, March 21, 1916.

Department's two, March 20, 11 p.m. pertaining to military expedition, received this afternoon and presented to Foreign Secretary at 7 p.m. Secretary promises to immediately present same to the Chief Executive.

RODGERS.

The Acting Secretary of State to the Confidential Agent of the de facto Government of Mexico.

DEPARTMENT OF STATE, Washington, March 21, 1916.

Sir: I beg to acknowledge the receipt of your letter of March 19, 1916, relative to the occupation of Mexican towns by United States forces.

In reply, you are informed that Gen. Funston was instructed by telegraph on March 18, 1916, to direct Brig. Gen. Pershing to avoid occupying any Mexican town.

I am, etc.,

FRANK L. POLK.

Statement by the President on Mexican Affairs.

As has already been announced, the expedition into Mexico was ordered under an agreement with the de facto government of Mexico for the single purpose of taking the bandit Villa, whose forces had actually invaded the territory of the United States, and is in no sense intended as an invasion of that republic or as an infringement of its sovereignty. I have therefore asked the several news services to be good enough to assist the Administration in keeping this view of the expedition constantly before both the people of this country and the distressed and sensitive people of Mexico, who are very susceptible indeed to impressions received from the American press not only but also very ready to believe that those impressions proceed from the views and objects of our government itself. Such conclusions, it must be said, are not unnatural, because the main, if not the only source of information for the people on both sides of the border is the public press of the United States. In order to avoid the creation of erroneous and dangerous impressions in this way, I have called upon the several news agencies to use the utmost care not to give news stories regarding this expedition the color of war, to withhold stories of troop movements and military preparations which might be given that interpretation, and to refrain from publishing unverified rumors of unrest in Mexico. I feel that it is most desirable to impress upon both our own people and the people of Mexico the fact that the expedition is simply a necessary punitive measure, aimed solely at the elimination of the marauders who raided Columbus and who infest an unprotected district near the border which they use as a base in making attacks upon the lives and property of our citizens within our own territory. It is the purpose of our commanders to cooperate in every possible way with the forces of General Carranza in removing this cause of irritation to both governments and to retire from Mexican territory so soon as that object is accomplished.

It is my duty to warn the people of the United States that there are persons all along the border who are actively engaged in originating and giving as wide currency as they can to rumors of the most sensational and disturbing sort which are wholly unjustified by the facts. The object of this traffic in falsehood is obvious. It is to create intolerable friction between the Government of the United States and the de facto Government of Mexico, for the purpose of bringing about intervention in the interest of certain American owners of Mexican properties. This

object can not be attained so long as sane and honorable men are in control of this government, but very serious conditions may be created, unnecessary bloodshed may result, and the relations between the two republics may be very much embarrassed. The people of the United States should know the sinister and unscrupulous influences that are afoot and should be on their guard against crediting any story coming from the border; and those who disseminate the news should make it a matter of patriotism and of conscience to test the source and authenticity of every report they receive from that quarter.

WOODROW WILSON.

THE WHITE HOUSE, March 25, 1916.

The Confidential Agent of the de facto Government of Mexico to the Secretary of State.

CONFIDENTIAL AGENCY OF THE CONSTITUTIONALIST GOVERNMENT OF MEXICO, Washington, April 13, 1916.

MR. SECRETARY: I have the honor to transmit to your excellency the full text of the following note which I have just received from my government:

QUERETARO, April 12, 1916.

MR. SECRETARY: The Mexican Government, in its desire to keep cordial and unalterable the good relations of friendship which ought to exist between Mexico and the United States, not only because this is the sentiment which animates the government itself, but owing to its desire to satisfy the spirit of Article 21 of the treaty of friendship concluded between the two countries under date of February 2, 1848, and in view of the lamentable occurrences which took place at Columbus on March 9, last, recalling historic precedents with respect to similar cases, did not hesitate to make to the government of the United States of America, under the aforesaid case of March 10, a proposition according to which the forces of both countries might reciprocally cross the boundary line in pursuit of raiders, if unfortunately there should be repeated along the frontier incidents such as that which occurred at Columbus, for from the very first the Mexican Government considered that, in view of the time which had elapsed and inasmuch as it was a question of a case already past, said incident could not be comprised within the proposition for a reciprocal passage of troops. For this reason the note of our government, delivered under date of March 10, very clearly indicates that the proposition embodied therein was conditional, or, what is the same, that reciprocity could take place only provided the irruption recorded at Columbus were unfortunately repeated at any other point along the boundary line.

The American Government, relying on the text of the aforementioned note and without having thoroughly comprehended its whole purport, conditionality and limitations, but rather believing in the existence of a definite agreement as indicated by the terms of the note of March 13, wherein it is stated "that the United States Government understands that in view of its consent to this reciprocal arrangement proposed by the defacto government, this arrangement is now complete and in force and that the aforementioned reciprocal privilege may be exercised by each government without future exchanges of ideas," considered itself authorized accordingly to send an expedition to Mexican territory which it has called punitive, for the purpose of pursuing and punishing Villa and his party of raiders, which expedition it sent several days after the malefactors had returned into Mexican territory.

On the 17th of March the Mexican Government sent a note to the American Government through our confidential agent at Washington, Mr. Licenciado Eliseo Arredondo, stating to it that it had received reliable information to the effect that, without the consent or advice of the political or civil authorities of our territory situated the nearest, and without any communication being sent meantime by the American to the Mexican Government, a so-called punitive expedition had passed via Palomas with a view to pursuing Villa and his party, and in consequence said confidential agent was instructed to call the attention of the United States Government to the facts that a false interpretation was being given to the text of the note of March 10, inasmuch as, while the Mexican Government was willing to adhere to its proposition regarding the reciprocal passage of troops, nevertheless no expedition could be sent until the terms and conditions of the agreement on the subject should become definite.

This government, in its note of March 17, insisted that the reciprocal passage of troops should be permitted only "provided, unfortunately, there should be repeated in future irruptions such as that as occurred at Columbus or of any other kind at some place along the boundary line."

Meanwhile the Mexican Government, faithful to the proposition made and with the intention of strictly living up to its agreement, set about at once to prepare the draft of an agreement for the reciprocal passage of troops, which draft was presented in due form to the United States Government on March 18, last, it being hoped that the terms and conditions set forth in said agreement would meet its approval. The American Government, through our aforesaid confidential agent, communicated that it tentatively accepted the agreement and that only points of mere detail were being studied in order to render the agreement definite. At this state of affairs a note was presented on March 19 to this office by the Honorable Mr. James Linn Rodgers, as representative of the American Government in this city, requesting that the proper authorities of Chihuahua be given the necessary instructions to permit the transportation to Casas Grandes, over the Northwestern Railroad of Mexico, of some provisions for the American troops who were pursuing Villa and his party, and on the same date the Mexican Government, without complying with this request, answered the said note by expressing surprise that, without any official notice on the part of the United States Government, American troops had crossed into Mexican territory and that these troops were already at Casas Grandes or its vicinity, the surprise being increased by the fact that an endeavor was being made through the proper channels and on account of the lamentable occurrences at Columbus to perfect arrangements with respect to the terms and conditions of an agreement for the passage of troops of both countries, in accordance with the spirit of the note of March 10 as aforementioned.

On March 18 our confidential agent at Washington had an interview with the Honorable Mr. Frank L. Polk, then Acting Secretary of State, the latter having stated to our confidential agent that he regretted not having received the observations of the Mexican Government prior to the passage of the American forces over the boundary, which observation would have been duly heeded, and he assured him that the passage of these troops took place with the best of good faith in the understanding that it would not be necessary to enter into further details of the agreement, which was considered final and concluded. These declarations made by the Honorable Mr. Polk were confirmed in all their parts at the conference held on March 23 by our confidential agent with Your Excellency, who likewise stated that he regretted having misinterpreted the contents of said note respecting the passage of troops, which latter would not advance any farther south from the place where they were at that time, as he assured our confidential agent.

On March 19 the Honorable Mr. Polk addressed a letter to our confidential agent at Washington ratifying to him in writing the conference held on the day before and stating to him in a clear and positive manner that it was a cause of sincere regret that there should have been a misunderstanding in regard to the attitude of the First Chief with respect to the crossing of the border by troops of the United States in pursuit of Villa, for the Department of State of the United States thought that our government had given its full consent to an arrangement like that proposed by the then Secretary of Foreign Relations, Señor Licenciate Jesus Acuña, in his note dated March 10, which arrangement the Government of the United States accepted by note of the 10th of March which was delivered to this government by Special Representative Silliman and under which the troops of either nation could, subject to certain conditions, pursue bandits on the territory of the other.

In the declarations publicly made on March 26 by His Excellency President Wilson, that functionary used the following language: "As had already been announced the expedition to Mexico was ordered under an agreement with the defacto government of Mexico for the sole purpose of capturing the bandit Villa, whose forces had just invaded the territory of the United States, and under no pretext has it been a case of invading that republic or violating its sovereignty." This view expressed by his excellency President Wilson was corrected under date of the 31st of the same month of March through a message sent to our confidential agent in Washington, by which he was instructed to interview your excellency and duly call your attention to the view indicated, since the note dated March 10 bears on the reciprocal passage of troops solely in the case of a recurrence of incidents like that which took place at Columbus.

Lastly, your excellency, under date of the 3d of the current month, on delivering to our confidential agent the counter draft of agreement for the reciprocal crossing of troops with a view to its being offered to the consideration of the Government of Mexico, accompanied it with a note in which you say that the American Government trusts that the conditions set forth in the said agreement will not apply to the American forces at present on Mexican territory in pursuit of Villa, with assurances that in exercising that privilege of entering our territory those forces would confine their

military operations to the sole purpose of the expedition and would immediately thereupon return to their own country, and your excellency expresses thanks to the Mexican Government for achieving, as put by you, a convention by means of which the forces of the United States are given permission to pursue Villa and his party on Mexican territory, in the understanding that the American Government is disposed to respect the confidence therein evinced and will not in any way violate the sovereignty of Mexico or misuse the privilege so generously and freely granted to it.

Now the government of Mexico in proposing to that of the United States the conclusion of a formal convention for the reciprocal passage of troops in perfect accord as to the terms and conditions that are to govern such a passage, and relying on the character and nature of the notes exchanged on the subject as they are drawn from this note, necessarily believed in the supposition that the American Government was fully convinced that the expedition sent forth on Mexican territory in pursuit of Villa is without a foundation because of there existing no previous agreement on the subject which has been the only motive of the discussion until this moment.

Furthermore, the Honorable Secretary of State Polk, in the conference with our confidential agent in Washington, stated that the government of the United States had acted in good faith in sending its expedition into Mexico in pursuit of Villa, in the supposition that the note of March 10 contained a definite agreement; and that the American government agreed that the expedition should remain on Mexican territory only while the details of the agreement were being concluded.

If now the American government pretends that the expedition sent against Villa should be considered as an exceptional case, and that it should remain outside of the terms of the agreement, it appears altogether useless to continue discussing the conditions and details of same, because these details can be taken up later if it is considered necessary should a repetition of the lamentable incident happening at Columbus occur.

In consequence of the above, as a definite agreement has not been reached in respect to the terms of the agreement or treaty which would in general govern the reciprocal passage of troops across the border for the sole purpose of pursuing foraging bands which, in the future, may commit depredations in either of the countries, the government of Mexico believes that it is advisable, for the present to suspend all discussions or negotiations relative to this matter; and considering that the expedition sent by the government of the United States to pursue Villa is without warrant, under the circumstances, because there existed no previous formal or definite understanding; and because this expedition is not fulfilling its object and undoubtedly can not do so, because the band headed by Villa has already been dispersed; and finally because there are sufficient Mexican troops to pursue him and that more forces are being sent to exterminate the rest of the dispersed band, the First Chief of the Constitutionalist Army, invested with the executive power of the Union, considers that it is now time to treat with the Government of the United States upon the subject of the withdrawal of its forces from our territory.

I take this occasion, etc.

C. AGUILAR, Secretary of Foreign Relations.

Accordingly, it gives me pleasure, etc.

E. ARREDONDO.

The Secretary of State to Special Representative Rodgers.

[Telegram.]

DEPARTMENT OF STATE, Washington, April 14, 1916.

You will orally communicate to Gen. Carranza or Señor Aguilar in the following sense:

The department has received through Senor Arredondo the esteemed note of the *de facto* government of the 12th instant and has the matters of which it treats under careful consideration.

The intention of this government is the same as it was at the outset when United States troops entered Mexico—that is, to endeavor to take the bandit chief Villa. It desires to repeat again to the de facto government that it has no intention to violate in any way the sovereignty of Mexico and purposes to withdraw immediately as soon as the object of the expedition is accomplished. It would seem that the best way to hasten the withdrawal of the American troops would be for the de facto government to throw enough of their military forces into the region where Villa must be in hiding to insure his speedy capture. This government believes that it is correct in the view that the capture of Villa would result in more benefit to the de facto government than to the government of the United States. That his capture can be more speedily accomplished by cooperation between the forces of the two governments is manifest, which can be most practically accomplished through frequent conferences between the military commanders of the two governments in the field.

For the American troops to withdraw at once from Mexico would, in the view of this government, result in encouraging the Villista faction and also the followers of Diaz who are operating near the border. We assume that the *de facto* government would deplore such a result, and we hope, therefore, that it will approach the question of the withdrawal of the American troops in the most liberal spirit and with full knowledge that this government's actions are inspired only by a desire to accomplish the mutual object sought without in any way affecting the friendly relations now existing between the two governments.

LANSING.

The Mexican Secretary of Foreign Relations to the Secretary of State.

[Translation.]

MEXICO, FEDERAL DISTRICT, May 22, 1916.

Mr. Secretary: I am instructed by the First Chief of the Constitutionalist Army in charge of the Executive Power of the Union, to transmit to your excellency the following note:

1. The Mexican Government has just been informed that a body of American troops, crossing the international line, has entered Mexican territory, and is at present near a place called El Pino, some 60 miles to the south of the frontier.

The passage of these troops, again carried out without the consent of the Mexican Government, gravely endangers the harmony and good relations which should exist between the Government of the United States and that of Mexico.

This government is forced to consider this act as one violating the sovereignty of Mexico, and, in consequence, urgently requests that the Government at Washington give the matter its most careful consideration with a view to define, once for all, the policy which it should pursue as regards the Mexican nation.

In order to show as clearly as possible the motives prompting the request made in the present note, it is necessary, before all, to examine carefully the events which have occurred up to the present moment.

2. As a result of the raiding of Columbus, New Mexico, by a band headed by Francisco Villa, on the morning of the 9th of March, of the present year, the Mexican Government, sincerely lamenting the occurrence, and with a view to effectively protect the boundary, expressed the desire that the Governments of the United States and Mexico should reach an agreement providing for the pursuit of the raiders. The Mexican Government made this proposition, guided by the precedent established under similar conditions prevailing in the years 1880 to 1884, and made a concrete request that permission be given Mexican troops to pursue raiders into American territory, under the same reciprocal conditions governing the passage of American troops to Mexican soil, in case such raids as that on Columbus should be repeated at any other point along the border.

As a result of this proposition, made in the Mexican note of March 10th,

the Government of the United States, either in error or precipitately, formed the opinion that the friendly attitude shown by the Mexican Government was sufficient to consider itself authorized to cross the frontier, and effectively, without awaiting a formal agreement in the matter, ordered a large body of American troops to enter Mexican territory in pursuit of Villa and his band.

- 3. The American Government, on this occasion, gave emphatic assurances to that of Mexico of its good faith, stating that the only object in crossing the boundary was to pursue and capture or destroy the band of Villa which had raided Columbus; that this act was not to be taken as signifying an invasion of our territory, nor an intention to violate the sovereignty of Mexico; and that as soon as the object of the expedition had been practically accomplished, the American troops would be withdrawn from Mexican territory.
- 4. The Mexican Government was not informed that American troops had crossed the frontier until the 17th of March, when the fact was brought unofficially to its attention, through private sources from El Paso, that some American troops were already on Mexican territory. This government then sent a note to that of the United States stating that inasmuch as the terms and conditions of the agreement to be formally made between the two countries for the passage of troops had not been decided upon, the American Government could not consider itself authorized to carry out the expedition.

The Washington Government explained the sending of the troops into Mexico by stating that it regretted that there should have existed a misinterpretation of the attitude of the Mexican Government in the matter of the passage of troops from the frontier of the United States in pursuit of Villa, but that this had been done under the impression that the previous exchange of messages implied the full consent of Mexican Government, without further formalities.

The Government of the United States further explained its attitude by the necessity of rapid action, and added that it would gladly receive any indications which the Government of Mexico might wish to make in regard to the terms of a definitive arrangement covering the operation of the troops in one or the other countries.

5. Both Governments then lent themselves to a discussion of the terms of an arrangement, according to which the reciprocal passage of troops should be settled. Two proposals of the Mexican Government and two counter proposals of that of the United States were submitted.

In the discussion of this agreement the Mexican Government constantly insisted that the passage of troops should be limited, as to the zone of operations on foreign soil, to the time that said troops should remain thereon, to the number of soldiers which should constitute the expedition, and to the class of arms to compose said expedition. The government of the United States refused to accept these limitations, and, finally, when it did accept the last counter proposal, it stated that in consenting to sign the agreement, it was on condition that said agreement should not apply to the Columbus expedition.

- 6. This attitude of the American Government was the cause of the Mexican Government sending its note of the 12th of April, in which, leaving aside all discussion of the agreement, once that it was not to cover the Columbus case, it asked the American Government to withdraw its troops, inasmuch as their presence on Mexican soil was not founded on any agreement, and as there was no further object in their remaining, once that the Villa bandits had been scattered and destroyed.
- 7. Though the American Government gave no answer to the said note of the 12th of April, nor did it take steps to withdraw its troops, it deemed it opportune that representatives of the armies of both countries should meet at some point on the frontier to treat of the military aspect of the situation, and to see if it were possible, in this way, to reach a satisfactory solution, which, on the part of Mexico, consisted in the withdrawal of American troops from its territory.

With this end in view, a conference was arranged at Ciudad Jaurez and El Paso between Gens. Hugh L. Scott and Frederick Funston, representing the American Government, and the Secretary of War and Marine of Mexico, Gen. Alvaro Obregon. A series of sessions was held and was marked by a spirit of frank cordiality. During these conferences the military situation and all data and explanations relating thereto were fully discussed.

As a result thereof there was submitted for the approval of the Governments of Washington and Mexico a project of a memorandum, in which Gen. Scott declared that the destruction and dispersion of the Villa band had been accomplished, and that in consequence thereof the American Government had decided to begin the withdrawal of its troops, under the promise of the Mexican Government to guard the frontier in such a manner as to prevent a recurrence of raids similar to that on Columbus.

8. The Mexican Government refused to give its approval to this

class of agreement, as it provided, furthermore, that the American Government might suspend the withdrawal of troops if any further incident might happen which would lead it to believe that Mexico was not able to protect the frontier as agreed upon.

The Mexican Government could not accept this conditional clause, as the evacuation of its territory is a matter which pertains entirely to the sovereignty of the country and is conditional, in no case, on the criterion of the American Government. On the other hand, it was very possible that some incident might occur which would give an aspect of legality to the indefinite stay of American troops on Mexican soil.

- 9. This point was still being discussed by Gens. Scott, Funston, and Obregon when, on the 6th of the present month of May, a party of bandits attacked an American garrison at Glenn Springs, on the American side, crossing immediately thereafter the Rio Bravo and interning themselves by way of Boquillas, in Mexican territory.
- 10. In view of this and fearing that the American Government might hasten the sending of more troops into Mexico in pursuit of the bandits, the Mexican Government gave instructions to Gen. Obregon to notify that of the United States that it would not permit the further passage of American troops into Mexico on this account, and that orders had been given to all the military commanders along the frontier not to consent to same.
- 11. On learning the attitude of the Mexican Government, Gens. Scott and Funston assured Gen. Obregon that no orders had been issued to American troops to cross the frontier on account of the Boquillas raid, and that, furthermore, no more American troops would cross into our territory.

This statement was made personally by Gens. Scott and Funston to Gen. Obregon at the time of the suspension of the conferences and was reiterated by Gen. Scott himself, thereafter, in a private conversation with Licenciado Juan Neftali Amador, Subsecretary of Foreign Relations, who had taken part in the said conferences between the military representatives of the United States and Mexico.

12. As a result of the Glenn Springs or Boquillas incident, and to prevent groups of bandits from organizing and arming near the frontier and repeating their raids, and in order to bring about an effective military cooperation between the American and the Mexican forces, this government suggested, through its representative, Gen. Obregon, to

the representatives of the United States, Gens. Scott and Funston, the advisability of settling upon a military plan providing for the distribution of troops along the frontier in order to insure an effective vigilance of the entire region, and in this way prevent, as far as possible, a recurrence of the raids. The Mexican Government in this way demonstrated not alone its good faith and intentions, but also its real desire to cooperate effectively with the Government of the United States, and to avoid new causes of friction between the two governments.

This reciprocal plan for the distribution of American and Mexican forces, in their respective territories along the frontier, was proposed in order to avert any immediate new cause of difficulty, the right being reserved, always, to reach a subsequent agreement for the reciprocal passage of troops as long as the abnormal conditions existed in our territory.

13. The conferences between Gens. Scott, Funston, and Obregon were suspended on the 11th of May without an arrangement having been reached for the unconditional withdrawal of American troops. Gen. Scott insisted on the preparation of a memoradum for the conditional withdrawal of American troops, but did not take into consideration the plan proposed by the Mexican Government for the protection of the frontier by a distribution of troops along the same.

Under these conditions the work of concluding the negotiations initiated at Ciudad Jaurez and El Paso reverted to the Governments of Washington and Mexico. Up to this moment no complication had arisen in regard to the new incident at Boquillas, and all the assurances given by Gens. Scott and Funston led one to suppose that this incident would not cause new difficulties.

14. The Mexican Government, nevertheless, has just been advised that some 400 men of the 8th Regiment of the American Army are on Mexican soil, having crossed the line near Boquillas about the 10th or the 11th instant. They are at present near a place called El Pino, some 60 miles to the south of the frontier. This fact reached the knowledge of the Mexican authorities through the commander of the American forces which crossed the frontier, he having sent the Mexican military commander a communication from Esmeralda, in Sierra Mojada, stating that he had crossed the frontier in pursuit of the bandits who had attacked Glenn Springs, in virtue of an agreement existing between the American and the Mexican Governments providing for the passage of troops and also with the consent of a Mexican consular officer at Del

Rio, Tex., whom he stated he had informed of the passage of the troops of his command.

15. The Mexican Government can not suppose that the American Government has, for the second time, committed an error in ordering the passage of its troops into Mexico without the consent of this government. It is difficult to understand how an officer of the American Army could enter Mexican territory without the due authorization of his superior officers, or that he should think for a moment that permission for the passage of his troops could be obtained from a consular officer.

The explanation given by the American Government for the sending of troops from Columbus has never been satisfactory to the Mexican Government, but the new invasion of our territory is not now an isolated fact, and leads the Mexican Government to believe that it has to treat with something more than a simple error.

16. This last act of the American forces creates new complications with the Mexican Government, renders more distant the possibility of a satisfactory solution, and creates a more complicated situation between the two countries.

The Mexican Government can not but consider this last act an invasion of our territory by American forces contrary to the expressed wish of the Mexican Government, and it is its duty to request, and it does request, of the American Government, that it order the immediate withdrawal of these new forces, and that it abstain from sending any further expedition of a similar nature.

17. The Mexican Government understands the obligation incumbent upon it to guard the frontier, but this obligation is not exclusively Mexican, and it hopes that the American Government, on which falls a similar obligation, will appreciate the material difficulties to be met with in so doing, inasmuch as it appears that the American forces themselves, notwithstanding their numbers and the further fact that their attention is not divided by other military operations, find themselves physically unable to protect effectively the frontier on the American side.

The Mexican Government has made every effort on its part to protect the frontier without, on the other hand, abandoning the work of pacifying the rest of the country, and the American Government should understand that if from time to time these lamentable incursions into American territory are perpetrated by bandit groups, this fact is rather a matter of pecuniary reparation and a reason to provide for a combined defense, but never the cause for the American forces to invade Mexican soil.

The raid of the bandit groups into American territory is a lamentable affair to be true, but one for which the Mexican Government, which is doing all possible to avoid a recurrence of such acts, can not be held responsible. The passage of American regular troops into Mexican territory against the expressed wish to the government does, indeed, constitute an act for which the American Government is responsible.

- 18. The Mexican Government believes, therefore, that the time has come to insist that the American Government withdraw the new expedition from Boquillas and that it abstain in the future from sending further troops across the border. At all events, the Mexican Government, having expressed clearly its nonconformity with the crossing of additional troops into Mexico, is forced to consider this as an act of invasion of its territory and, in consequence, will be obliged to defend itself against any body of American troops on its soil.
- 19. In regard to the troops which are now in the State of Chihuahua and which crossed as a result of the Columbus affair, the Mexican Government is forced to insist upon their withdrawal.

The Mexican Government is aware that in case of a refusal to retire these troops, there is no further recourse than to defend its territory by appeal to arms, yet at the same time it understands its duty to avoid, as far as possible, an armed conflict between both countries, and relying on Article 21 of the treaty of the 2d of February, of 1848, it considers it its duty to resort to every pacific method to solve the international conflict pending between the two countries.

- 20. The Mexican Government considers it necessary to take advantage of this opportunity to request of the American Government a more categorical definition of its true intentions toward Mexico. In this respect it hopes that, in expressing itself with entire frankness, its words be not so interpreted as intending to wound the susceptibilities of the American Government, but it finds itself in the necessity of laying aside diplomatic euphemisms and expressing itself with all possible clearness. If in stating the grievances which follow the Mexican Government uses the utmost frankness, it is because it considers it its duty to bring the point of view of the Mexican people as clearly as possible to the attention of the Government and the people of the United States.
- 21. The American Government for some time past has been making assurance of friendship to the Latin American people, and has taken

advantage of every opportunity to convince them that it wishes to respect their sovereignty absolutely.

Especially with respect to Mexico the American Government has declared on various occasions that it was not its intention to intervene in any manner in its interior affairs and that it desires to leave it to our country to work out alone its difficult and varied problems of political and social transformation.

Only recently, on the occasion of sending the expedition from Columbus, the American Government, through the President, declared that it would not intervene in the domestic affairs of Mexico, nor invade the country; that it did not desire an inch of its territory, and that under no circumstances would any attempt be made on its sovereignty.

The Government at Washington and its representatives at the frontier have further expressly stated that it is not the wish of the American people to enter into a war or an armed conflict with the Mexican people.

In summing up the matter, and judging by the official statements which have for some time past been made by the Government at Washington, one would think that there was a real desire on the part of the government and the people not to enter into conflict with Mexico.

- 22. The Mexican Government has, nevertheless, to confess that the acts of the American military authorities are in direct contradiction to the statements above referred to, and finds itself forced, therefore, to appeal to the President, the Department of State, the Senate and the American people, for a definition, once for all, of the true political intentions of the United States as regards Mexico.
- 23. It is equally imperative that the Government of the United States define, in a precise manner, its intentions as to Mexico, in order that the other Latin American nations might judge of their sincerity, and that they might appreciate the true value of the assurances of friendship and fraternity made to them for many years past.
- 24. The American Government stated, through the President himself, that the punitive expedition from Columbus would be withdrawn from Mexican territory as soon as the Villa band had been destroyed or dispersed. More than two months have passed since the expedition entered Mexican territory. Gens. Scott and Funston declared in Ciudad Juarez that the bands of Villa are completely dispersed, and yet American troops are not as yet withdrawn from Mexico.

The Government of the United States is convinced and is cognizant of the fact that there is no further work of a military nature to be performed by the expedition from Columbus, and nevertheless it has not yet complied with the promise made by President Wilson that these troops would be withdrawn as soon as the motive for their entry into Mexico had been removed.

The motives for preserving interior political order which might militate against the withdrawal of the troops from Mexican territory, unfounded as they are, do not justify this attitude, but, on the contrary, accentuate the discrepancy between the assurances of respect for Mexico's sovereignty and the actual fact that for purely political reasons in the United States this state of affairs, so unjust towards the Mexican Republic, is allowed to continue.

25. The American Government stated that its intention in sending troops into Mexico was only to defend its frontier against possible incursions. This statement is, notwithstanding, in contradiction to the attitude assumed by the government itself in discussing the agreement in regard to a reciprocal crossing of the boundary, for while the Mexican Government insisted that this agreement limit the zone of operations of the troops of each country, the duration of the expeditions, the number of soldiers and the class to which they should belong, the American Government constantly eluded these limitations. This attitude of the American Government, which was the one which expected to cross the boundaries at such times as might be necessary, in pursuit of the bandits, is clearly indicating its intention of preparing to penetrate further into Mexican territory than the purposes of defense would seem to warrant.

26. The punitive expedition from Columbus, as it has been called, did not have, according to statements of President Wilson, any further object than to capture and punish the band guilty of the raid, and was organized under the supposition that the Mexican Government had consented thereto. Nevertheless it has shown an attitude of manifest distrust toward the Mexican Government and a spirit of such absolute independence that it can not but justly be considered as an invasion without Mexico's consent, without its knowledge and without the cooperation of its authorities.

It was well known that the Columbus expedition crossed the frontier without the knowledge of the Mexican Government. The American military authorities carried out this expedition without waiting to obtain the consent of the Government of Mexico, and even after they were officially advised that this government had not given its consent thereto,

they continued to send forward more troops without informing the Mexican Government thereof.

The expedition has crossed into and operated in Mexican territory without seeking the cooperation of the Mexican authorities. The American military authorities have maintained always the most complete silence respecting their movements, never informing the Mexican Government of them, as they would have done had they in reality desired to obtain the cooperation of the latter. This failure to advise and cooperate with the Mexican authorities was the cause of the encounter which took place in Parral between the American forces and Mexican citizens.

Finally, the Columbus expedition was effected not in a spirit of harmony but, on the contrary, of distrust and suspicion of our authorities, for not only was no effort made to seek our cooperation or to keep us informed regarding the military operations being carried out, but the said expedition was organized with artillery and infantry forces.

If it was intended to pursue a band of robbers, an act which, by its very nature, required rapidity, such pursuit should have been carried out by a squad of cavalry. The employment of artillery and of infantry can not be explained in any other way than as a measure of precaution against a probable attack by the Mexican forces.

Now, then, it is not possible to reconcile the declarations of friendly cooperation made by the American authorities with the use of the infantry and artillery, exclusively destined for use against the regular Mexican forces.

If the Columbus expedition had been carried out with the consent of the Mexican Government and the coöperation of the latter had been sought, the employment of the artillery and of the infantry would have been an insult to the Mexican authorities as offering a suggestion of the possibility of treachery on their part against the American forces who had entered Mexican territory in the pursuit of a common enemy, relying on the friendship of the former. It is preferable, notwithstanding, to interpret this as a proof that the American forces crossed into Mexican territory without the consent of the Mexican Government and were, therefore, resolved to repel any aggression on the part of the regular Mexican troops, who were ignorant of their presence.

All of this demonstrates a great discrepancy between the assurances on the part of the American authorities of a sincere and friendly coöperation and the actual purpose of the expedition, which, through its distrust, the secrecy maintained regarding its movements, and the forces of which it was composed, clearly indicated the hostile nature of the expedition and an actual invasion of our territory.

27. The American Government has stated on various occasions that the Columbus expedition had no other object than that of pursuing and dispersing Villa's bands, and that so soon as this was accomplished its forces would retire.

The facts, however, have demonstrated that the intention of the American Government was no longer the same as during the conferences at Ciudad Juarez and El Paso. There is no other way of explaining why Gen. Scott should have insisted so emphatically on the signing of a memorandum which stated that the American forces would not have been withdrawn if any other occurrence took place which might convince the American Government of the inability of the Government of Mexico to protect the frontier. The conclusion to be deduced from this insistence of Gen. Scott, on the signing of this memorandum, is that the Columbus expedition entered Mexico promising to withdraw as soon as the bands of Villa had been destroyed, but that afterwards efforts were made to make use of the said expedition as a means to guarantee the protection to the frontier.

28. The American Government justly desires the protection of its frontier. If the frontier were duly protected against incursions from Mexico there would be now no reason for the existing difficulties. The American Government understands perfectly the difficulties which exist in the protection of a boundary which possesses no natural advantages for its defense, and, notwithstanding its enormous resources the American Government itself has been unable to afford an efficient protection along the more than 2,000 kilometers which it has to cover.

The Mexican Government proposed that the military chiefs at the head of the troops of each country should discuss a plan of distribution of troops along the boundary line, and notwithstanding the assurances of the Government of the United States that it desired to find a solution to the difficulties with Mexico, Gen. Scott would not agree to carry out this plan, which is the only rational one and the only one which could be effected without the necessity of one or the other country invading the territory of the other. The American Government prefers to maintain its troops inactive and idle on Mexican territory rather than to withdraw them and station them along the border by arrangement with the Mexican authorities who would agree to do the same. By acting as it

has the American Government leads us to suppose that its real intention is to keep these troops in Mexico in the event that it may need them there later for future operations.

29. The American Government on every occasion has declared itself as desirous of assisting the Constitutionalist Government in concluding its work of pacification, and of accomplishing this in the shortest possible times. The real attitude of the American Government in connection with these desires appears incongruous, as, for some time past, it has been committing various acts which indicate that it not only does not lend its aid in the pacification of Mexico but that, on the contrary, it seems to place every possible obstacle in the way of attaining such an end. In reality, without considering the great volume of diplomatic representations which under the pretext of protection of established American interests in Mexico, constantly impede the labor of the new government in its efforts to reorganize the political, economic and social conditions of the country on new bases, a large number of other acts seem to show that the influence of the American Government is directed against the consolidation of the present Mexican Government.

The decided aid lent at one time to Villa by Gen. Scott and the Department of State was itself the principal cause of the prolonged civil war in Mexico. Later the continuous aid extended by the American Catholic clergy to that of Mexico, which labored unceasingly against the Constitutionalist Government, and the constant activity of the American press favoring intervention and the interests of the business men of the United States, are still further indications that the present American Government can not or will not prevent the work of conspiracy which is being effected in the United States against the Constitutionalist Government.

30. The American Government incessantly demands from the Mexican Government an effective protection of its frontier, and yet the greater part of the bands which take the name of rebels against this government are cared for and armed, if they are not also organized, on the American side under the tolerance of the authorities of the State of Texas, and, it may even be said, that of the Federal authorities of the United States. The leniency of the American authorities respecting these bands is such that in a majority of the cases the conspirators, who are well known, when they have been discovered and taken to prison, obtain their liberty by insignificant promises which allows them to continue in their efforts.

The Mexican emigrants who conspire and organize incursions from the United States side have now more facilities for doing harm than formerly, for they know that any new difficulty between Mexico and the United States will prolong the stay of the American troops. They endeavor therefore to increase the possibilities of conflict and friction.

31. The American Government says it will aid the Constitutionalist Government in its labor of pacification and demands urgently that such pacification be effected in the quickest possible time, and that at the same time the protection of the frontiers shall be effected in the most efficacious manner. Yet notwithstanding this, it has on various occasions detained the shipments of arms and munitions purchased by the Mexican Government in the United States, destined to be employed in accelerating the work of pacification and in the more effective protection of the frontier. The pretexts for detaining the shipments of munitions consigned to this government have always been futile, and a frank reason has never been given. It has been said, for example, that the munitions have been embargoed because of the fact that the true owner was not known, or because of the fear that they might fall into the hands of the Villistas.

The embargo on stores consigned to the Mexican Government can be interpreted in no other way than that the American Government desired to be on its guard against the emergency of a possible future conflict and for that reason tries to prevent arms and stores from reaching the Mexican Government, as they may eventually be used against the Americans themselves. The American Government would be within its rights in guarding against such an emergency, but in such a case it should not claim that it is trying to cooperate with the Mexican Government, and it would be better to show a greater frankness in its procedure.

Either the American Government really and decidedly wishes to assist the Mexican Government in reestablishing peace, and in this event it should not impede the movement of arms, or else its real intention is to prepare itself so that in the event of future war with Mexico this country may find itself less provided with arms and provisions. If the latter is true it would be better to say so.

In any event the embargo on arms and supplies consigned to the Mexican authorities, effected under the weak pretext of preventing such arms and munitions from falling into the hands of the Villistas, is a clear indication that the real acts of the military authorities are completely

out of accord with the proposals of peace on the part of the American Government.

The Mexican Government does not wish war with the United States, and if this should occur it will be as a consequence of the deliberate cause by the United States. To-day these measures of precaution by the American Government show that there is a desire to be prepared for such an emergency, or, what amounts to the same thing, they manifest an attitude of hostility on the part of the United States toward Mexico.

32. Finally, the American authorities in New York, at the suggestion of a neutral society of pacifists, have ordered the detention of certain pieces of machinery which the Mexican Government removed to Mexico for the manufacture of munitions, which machinery could not be utilized for several months after bringing it to this country. This act of the American Government which tends to prevent the manufacture of munitions at a remote future time, is another clear indication that its true attitude toward Mexico is not a peaceful one, for, while millions and millions of dollars worth of arms and ammunition are exported for the European war without these societies of pacifists of the United States being perturbed thereby, the authorities of New York show themselves too much disposed to support the demands of these humanitarian societies when they deal with the proposition of exporting to Mexico machinery for the manufacture of its arms and supplies.

Mexico has the unquestionable right, as does the United States and all other nations of the world, to provide for its military necessities, above all when it finds itself confronted by a task so vast as that of accomplishing the internal pacification of this country; and the act of the United States in embargoing machinery destined for the manufacture of munitions indicates either that the United States wishes to place obstacles in the way of complete pacification or that this act is only one of a series effected by the authorities of the United States in providing against a possible war with Mexico.

- 33. All the circumstances hereinbefore mentioned indicate that the real objects of the military authorities of the United States are in absolute contradiction to the continued declarations of friendship on the part of the American Government toward Mexico.
- 34. The people and the Government of Mexico are absolutely sure that the American people do not desire war with Mexico. There are none the less great American and great Mexican interests anxious for a conflict between the two countries. The Mexican Government firmly

desires to maintain peace with the American Government, but to this end it is indispensable that the American Government explain frankly its true attitude toward Mexico.

It is indispensable that this contradiction between the assurances of friendship on the part of Washington and the acts of suspicion and distrust and aggression on the part of the military authorities should disappear.

The people and Government of Mexico must know what to expect, and wish to be sure that the assurances so many times expressed by the Government of the United States correspond really to its sincere desire for friendship between the two countries, friendship that should exist not only in the statements but which should be crystallized into acts.

The Mexican Government invites the Government of the United States to bring about a cessation of this situation of uncertainty between the two countries and to support its declarations and assurances of friendship with real and effective acts which shall convince the Mexican people of the sincerity of its proposals. These acts, at the moment can not be other than the immediate withdrawal of the American troops which are to-day on Mexican territory.

In complying with the instructions of the Citizens' First Chief, I avail myself of this opportunity to offer your excellency the assurances of my most distinguished consideration.

THE SECRETARY: C. AGUILAR.

The Secretary of State to the Secretary of Foreign Relations of the de facto Government of Mexico.

DEPARTMENT OF STATE, Washington, June 20, 1916.

Sir: I have read your communication, which was delivered to me on May 22, 1916, under instructions of the Chief Executive of the de facto Government of Mexico, on the subject of the presence of American troops in Mexican territory, and I would be wanting in candor if I did not, before making answer to the allegations of fact and the conclusions reached by your government, express the surprise and regret which have been caused this government by the discourteous tone and temper of this last communication of the de facto Government of Mexico.

The Government of the United States has viewed with deep concern and increasing disappointment the progress of the revolution in Mexico. Continuous bloodshed and disorders have marked its progress. three years the Mexican Republic has been torn with civil strife; the lives of Americans and other aliens have been sacrificed; vast properties developed by American capital and enterprise have been destroyed or rendered nonproductive; bandits have been permitted to roam at will through the territory contiguous to the United States and to seize, without punishment or without effective attempt at punishment, the property of Americans, while the lives of citizens of the United States who ventured to remain in Mexican territory or to return there to protect their interests have been taken, and in some cases barbarously taken, and the murderers have neither been apprehended nor brought to justice. It would be difficult to find in the annals of the history of Mexico conditions more deplorable than those which have existed there during these recent years of civil war.

It would be tedious to recount instance after instance, outrage after outrage, atrocity after atrocity, to illustrate the true nature and extent of the widespread conditions of lawlessness and violence which have prevailed. During the past nine months in particular, the frontier of the United States along the lower Rio Grande has been thrown into a state of constant apprehension and turmoil because of frequent and sudden incursions into American territory and depredations and murders on American soil by Mexican bandits, who have taken the lives and destroyed the property of American citizens, sometimes carrying American citizens across the international boundary with the booty seized. American garrisons have been attacked at night, American soldiers killed and their equipment and horses stolen: American ranches have been raided, property stolen and destroyed, and American trains wrecked and plundered. The attacks on Brownsville, Red House Ferry, Progreso Post Office, and Las Peladas, all occurring during September last, are typical. In these attacks on American territory, Carrancista adherents, and even Carrancista soldiers took part in the looting, burning and killing. Not only were these murders characterized by ruthless brutality, but uncivilized acts of mutilation were perpetrated. Representations were made to General Carranza and he was emphatically requested to stop these reprehensible acts in a section which he has long claimed to be under the complete domination of his authority. Notwithstanding these representations and the promise of General Nafarrete

to prevent attacks along the international boundary, in the following month of October a passenger train was wrecked by bandits and several persons killed seven miles north of Brownsville, and an attack was made upon United States troops at the same place several days later. Since these attacks leaders of the bandits well known both to Mexican civil and military authorities as well as to American officers have been enjoying with impunity the liberty of the towns of northern Mexico. So far has the indifference of the de facto government to these atrocities gone that some of these leaders, as I am advised, have received not only the protection of that government, but encouragement and aid as well.

Depredations upon American persons and property within Mexican jurisdiction have been still more numerous. This government has repeatedly requested in the strongest terms that the de facto government safeguard the lives and homes of American citizens and furnish the protection, which international obligation imposes, to American interests in the northern States of Tamaulipas, Nuevo Leon, Coahuila, Chihuahua, and Sonora, and also in the States to the south. For example, on January 3d troops were requested to punish the bands of outlaws which looted the Cusi mining property, eighty miles west of Chihuahua, but no effective results came from this request. During the following week the bandit Villa with his band of about 200 men was operating without opposition between Rubio and Santa Ysabel, a fact well known to Carrancista authorities. Meanwhile a party of unfortunate Americans started by train from Chihuahua to visit the Cusi mines, after having received assurances from the Carrancista authorities in the State of Chihuahua that the country was safe, and that a guard on the train was not necessary. The Americans held passports or safe conducts issued by authorities of the de facto government. On January 10th the train was stopped by Villa bandits and eighteen of the American party were stripped of their clothing and shot in cold blood, in what is now known as "the Santa Ysabel massacre." General Carranza stated to the agent of the Department of State that he had issued orders for the immediate pursuit, capture, and punishment of those responsible for this atrocious crime, and appealed to this government and to the American people to consider the difficulties of according protection along the railroad where the massacre occurred. Assurances were also given by Mr. Arredondo, presumably under instructions from the de facto government, that the murderers would be brought to justice, and that steps would also be taken to remedy the lawless condi-

tions existing in the State of Durango. It is true that Villa, Castro, and Lopez were publicly declared to be outlaws and subject to apprehension and execution, but so far as known, only a single man personally connected with this massacre has been brought to justice by Mexican authorities. Within a month after this barbarous slaughter of inoffensive Americans it was notorious that Villa was operating within twenty miles of Cusihuiriachic, and publicly stated that his purpose was to destroy American lives and property. Despite repeated and insistent demands that military protection should be furnished to Americans, Villa openly carried on his operations, constantly approaching closer and closer to the border. He was not intercepted, nor were his movements impeded by troops of the de facto government, and no effectual attempt was made to frustrate his hostile designs against Americans. In fact, as I am informed, while Villa and his band were slowly moving toward the American frontier in the neighborhood of Columbus, New Mexico, not a single Mexican soldier was seen in his vicinity. Yet the Mexican authorities were fully cognizant of his movements, for on March 6th, as General Gavira publicly announced, he advised the American military authorities of the outlaw's approach to the border, so that they might be prepared to prevent him from crossing the bound-Villa's unhindered activities culminated in the unprovoked and cold-blooded attack upon American soldiers and citizens in the town of Columbus on the night of March 9th, the details of which do not need repetition here in order to refresh your memory with the heinousness of the crime. After murdering, burning, and plundering, Villa and his bandits fleeing south passed within sight of the Carrancista military post at Casas Grandes, and no effort was made to stop him by the officers and garrison of the de facto government stationed there.

In the face of these depredations not only on American lives and property on Mexican soil but on American soldiers, citizens and homes on American territory, the perpetrators of which General Carranza was unable or possibly considered it inadvisable to apprehend and punish, the United States had no recourse other than to employ force to disperse the bands of Mexican outlaws who were with increasing boldness systematically raiding across the international boundary. The marauders engaged in the attack on Columbus were driven back across the border by American cavalry, and subsequently, as soon as a sufficient force to cope with the band could be collected, were pursued into Mexico in an effort to capture or destroy them. Without cooperation or assistance

in the field on the part of the *de facto* government, despite repeated requests by the United States, and without apparent recognition on its part of the desirability of putting an end to these systematic raids, or of punishing the chief perpetrators of the crimes committed, because they menaced the good relations of the two countries, American forces pursued the lawless bands as far as Parral, where the pursuit was halted by the hostility of Mexicans, presumed to be loyal to the *de facto* government, who arrayed themselves on the side of outlawry and became in effect the protectors of Villa and his band.

In this manner and for these reasons have the American forces entered Mexican territory. Knowing fully the circumstances set forth the de facto government cannot be blind to the necessity which compelled this government to act and vet it has seen fit to recite groundless sentiments of hostility toward the expedition and to impute to this government ulterior motives for the continued presence of American troops on Mexican soil. It is charged that these troops crossed the frontier without first obtaining the consent or permission of the de facto government. Obviously, as immediate action alone could avail, there was no opportunity to reach an agreement (other than that of March 10th-13th now repudiated by General Carranza) prior to the entrance of such an expedition into Mexico if the expedition was to be effective. Subsequent events and correspondence have demonstrated to the satisfaction of this government that General Carranza would not have entered into any agreement providing for an effective plan for the capture and destruction of the Villa bands. While the American troops were moving rapidly southward in pursuit of the raiders, it was the form and nature of the agreement that occupied the attention of General Carranza rather than the practical object which it was to attain—the number of limitations that could be imposed upon the American forces to impede their progress rather than the obstacles that could be raised to prevent the escape of the outlaws. It was General Carranza who suspended through your note of April 12th all discussions and negotiations for an agreement along the lines of the protocols between the United States and Mexico concluded during the period 1882-1896, under which the two countries had so successfully restored peaceful conditions on their common boundary. It may be mentioned here that, notwithstanding the statement in your note that "the American Government gave no answer to the note of the 12th of April," this note was replied to on April 14th, when the Department instructed Mr. Rodgers by telegraph to deliver

this Government's answer to General Carranza. Shortly after this reply the conferences between Generals Scott, Funston and Obregon began at El Paso, during which they signed on May 2d a project of a memorandum ad referendum regarding the withdrawal of American troops. As an indication of the alleged bad faith of the American Government, you state that though General Scott declared in this memorandum that the destruction and dispersion of the Villa band "had been accomplished," yet American forces are not withdrawn from Mexico. It is only necessary to read the memorandum, which is in the English language, to ascertain that this is clearly a misstatement, for the memorandum states that "the American punitive expeditionary forces have destroyed or dispersed many of the lawless elements and bandits, * * * or have driven them far into the interior of the Republic of Mexico." and further, that the United States forces were then "carrying on a vigorous pursuit of such small numbers of bandits or lawless elements as may have escaped." The context of your note gives the impression that the object of the expedition being admittedly accomplished, the United States had agreed in the memorandum to begin the withdrawal of its troops. The memorandum shows, however, that it was not alone on account of partial dispersion of the bandits that it was decided to begin the withdrawal of American forces, but equally on account of the assurances of the Mexican Government that their forces were "at the present time being augmented and strengthened to such an extent that they will be able to prevent any disorders occurring in Mexico that would in any way endanger American territory," and that they would "continue to diligently pursue, capture or destroy any lawless bands of bandits that may still exist or hereafter exist in the northern part of Mexico," and that it would "make a proper distribution of such of its forces as may be necessary to prevent the possibility of invasion of American territory from Mexico." It was because of these assurances and because of General Scott's confidence that they would be carried out that he stated in the memorandum that the American forces would be "gradually withdrawn." It is to be noted that, while the American Government was willing to ratify this agreement, General Carranza refused to do so, as General Obregon stated, because, among other things, it imposed improper conditions upon the Mexican Government.

Notwithstanding the assurances in the memorandum, it is well known that the forces of the *de facto* government have not carried on a vigorous pursuit of the remaining bandits and that no proper distribution of forces

to prevent the invasion of American territory has been made, as will be shown by the further facts hereinafter set forth. I am reluctant to be forced to the conclusion which might be drawn from these circumstances that the *de facto* government, in spite of the crimes committed and the sinister designs of Villa and his followers, did not and does not now intend or desire that these outlaws should be captured, destroyed, or dispersed by American troops or, at the request of this government, by Mexican troops.

While the conferences at El Paso were in progress, and after the American conferees had been assured on May 2d that the Mexican forces in the northern part of the republic were then being augmented so as to be able to prevent any disorders that would endanger American territory, a band of Mexicans, on the night of May 5th, made an attack at Glenn Springs, Texas, about twenty miles north of the border, killing American soldiers and civilians, burning and sacking property and carrying off two Americans as prisoners. Subsequent to this event, the Mexican Government, as you state, "gave instructions to General Obregon to notify that of the United States that it would not permit the further passage of American troops into Mexico on this account, and that orders had been given to all military commanders along the frontier not to consent to same." This government is of course not in a position to dispute the statement that these instructions had been given to General Obregon, but it can decisively assert that General Obregon never gave any such notification to General Scott or General Funston or, so far as known, to any other American official. General Obregon did, however, inquire as to whether American troops had entered Mexico in pursuit of the Glenn Springs raiders, and General Funston stated that no orders had been issued to American troops to cross the frontier on account of the raid, but this statement was made before any such orders had been issued, and not afterwards, as the erroneous account of the interview given in your note would appear to indicate. Moreover, no statement was made by the American generals that "no more American troops would cross into our territory." On the contrary, it was pointed out to General Obregon and to Mr. Juan Amador, who was present at the conference, and pointed out with emphasis, that the bandits de la Rosa and Pedro Vino, who had been instrumental in causing the invasion of Texas above Brownsville, were even then reported to be arranging in the neighborhood of Victoria for another raid across the border, and it was made clear to General Obregon that if the Mexican

Government did not take immediate steps to prevent another invasion of the United States by these marauders, who were frequently seen in the company of General Nafarrete, the Constitutionalist commander, Mexico would find in Tamaulipas another punitive expedition similar to that then in Chihuahua. American troops crossed into Mexico on May 10th, upon notification to the local military authorities, under the repudiated agreement of March 10-13th, or in any event in accordance with the practice adopted over forty years ago, when there was no agreement regarding pursuit of marauders across the international boundary. These troops penetrated 168 miles into Mexican territory in pursuit of the Glenn Springs marauders without encountering a detachment of Mexican troops or a single Mexican soldier. Further discussion of this raid, however, is not necessary, because the American forces sent in pursuit of the bandits recrossed into Texas on the morning of May 22d, the date of your note under consideration—a further proof of the singleness of purpose of this government in endeavoring to quell disorder and stamp out lawlessness along the border.

During the continuance of the El Paso conferences, General Scott, you assert, did not take into consideration the plan proposed by the Mexican Government for the protection of the frontier by the reciprocal distribution of troops along the boundary. This proposition was made by General Obregon a number of times, but each time conditioned upon the immediate withdrawal of American troops, and the Mexican conferees were invariably informed that *immediate* withdrawal could not take place, and that therefore it was impossible to discuss the project on that basis.

I have noted the fact that your communication is not limited to a discussion of the deplorable conditions existing along the border and their important bearing on the peaceful relations of our governments, but that an effort is made to connect it with other circumstances in order to support, if possible, a mistaken interpretation of the attitude of the Government of the United States toward Mexico. You state in effect that the American Government has placed every obstacle in the way of attaining the pacification of Mexico, and that this is shown by the volume of diplomatic representations in behalf of American interests which constantly impede efforts to reorganize the political, economical, and social conditions of the country; by the decided aid lent at one time to Villa by American officers and by the Department of State; by the aid extended by the American Catholic clergy to that of Mexico; by

the constant activity of the American press in favor of intervention and the interests of American business men; by the shelter and supply of rebels and conspirators on American territory; by the detention of shipments of arms and munitions purchased by the Mexican Government; and by the detention of machinery intended for their manufacture.

In reply to this sweeping charge, I can truthfully affirm that the American Government has given every possible encouragement to the de facto government in the pacification and rehabilitation of Mexico. From the moment of its recognition, it has had the undivided support of this government. An embargo was placed upon arms and ammunition going into Chihuahua, Sonora, and Lower California, in order to prevent their falling into the hands of the armed opponents of the de facto government. Permission has been granted from time to time, as requested, for Mexican troops and equipment to traverse American territory from one point to another in Mexico in order that the operations of Mexican troops against Villa and his forces might be facilitated. In view of these friendly acts, I am surprised that the de facto government has construed diplomatic representations in regard to the unjust treatment accorded American interests, private assistance to opponents to the de facto government by sympathizers in a foreign country, and the activity of a foreign press as interference by the United States Government in the domestic politics of Mexico. If a denial is needed that this government has had ulterior and improper motives in its diplomatic representations, or has countenanced the activities of American sympathizers and the American press opposed to the de facto government, I am glad most emphatically to deny it. It is, however, a matter of common knowledge that the Mexican press has been more active than the press in the United States in endeavoring to inflame the two peoples against each other and to force the two countries into hostilities. With the power of censorship of the Mexican press, so rigorously exercised by the de facto government, the responsibility for this activity cannot, it would seem, be avoided by that government, and the issue of the appeal of General Carranza himself in the press of March 12th, calling upon the Mexican people to be prepared for any emergency which might arise, and intimating that war with the United States was imminent, evidences the attitude of the de facto government toward these publications. It should not be a matter of surprise that, after such manifestations of hostile feeling, the United States was doubtful of the purpose for which the large amount of ammunition was to be used which the *de facto* government appeared eager to import from this country. Moreover, the policy of the *de facto* government in refusing to cooperate and in failing to act independently in destroying the Villa bandits and in otherwise suppressing outlawry in the vicinity of the border so as to remove the danger of war materials, while passing southward through this zone, falling into the hands of the enemies of law and order is, in the opinion of this government, a sufficient ground, even if there were no other, for the refusal to allow such materials to cross the boundary into the bandit-infested region. To have permitted these shipments without careful scrutiny would, in the circumstances, have been to manifest a sense of security which would have been unjustified.

Candor compels me to add that the unconcealed hostility of the subordinate military commanders of the *de facto* government toward the American troops engaged in pursuing the Villa bands and the efforts of the *de facto* Government to compel their withdrawal from Mexican territory by threats and show of military force instead of by aiding in the capture of the outlaws constitute a menace to the safety of the American troops and to the peace of the border. As long as this menace continues and there is any evidence of an intention on the part of the *de facto* government or its military commanders to use force against the American troops instead of coöperating with them, the Government of the United States will not permit munitions of war or machinery for their manufacture to be exported from this country to Mexico.

As to the shelter and supply of rebels and conspirators on American territory, I can state that vigorous efforts have been and are being made by the agents of the United States to apprehend and bring to justice all persons found to be conspiring to violate the laws of the United States by organizing to oppose with arms the *de facto* Government of Mexico. Political refugees have undoubtedly sought asylum in the United States, but this government has vigilantly kept them under surveillance and has not hesitated to apprehend them upon proof of their criminal intentions, as the arrest of General Huerta and others fully attests.

Having corrected the erroneous statements of fact to which I have adverted, the real situation stands forth in its true light. It is admitted that American troops have crossed the international boundary in hot pursuit of the Columbus raiders and without notice to or the consent of your government but the several protestations on the part of this government by the President, by this department, and by other American authorities, that the object of the expedition was to capture, destroy,

or completely disperse the Villa bands of outlaws or to turn this duty over to the Mexican authorities when assured that it would be effectively fulfilled, have been carried out in perfect good faith by the United States. Its efforts, however, have been obstructed at every point; first, by insistence on a palpably useless agreement which you admit was either not to apply to the present expedition or was to contain impracticable restrictions on its organization and operation; then by actual opposition, encouraged and fostered by the de facto government, to the further advance of the expedition into Villa territory, which was followed by the sudden suspension of all negotiations for an arrangement for the pursuit of Villa and his followers and the protection of the frontier: and finally by a demand for the immediate withdrawal of the American troops. Meantime, conditions of anarchy in the border States of Mexico were continually growing worse. Incursions into American territory were plotted and perpetrated: the Glenn Springs raid was successfully executed, while no effective efforts were being made by General Carranza to improve the conditions and to protect American territory from constant threat of invasion. In view of this increasing menace, of the inactivity of the Carranza forces, of the lack of cooperation in the apprehension of the Villa bands, and of the known encouragement and aid given to bandit leaders, it is unreasonable to expect the United States to withdraw its forces from Mexican territory or to prevent their entry again when their presence is the only check upon further bandit outrages and the only efficient means of protecting American lives and homes-safeguards which General Carranza, though internationally obligated to supply, is manifestly unable or unwilling to give.

In view of the actual state of affairs as I have outlined it above, I am now in a position to consider the conclusions which you have drawn in your note under acknowledgment from the erroneous statements of fact which you have set forth.

Your government intimates, if it does not openly charge, that the attitude of the United States is one of insincerity, distrust, and suspicion toward the de facto Government of Mexico, and that the intention of the United States in sending its troops into Mexico is to extend its sovereignty over Mexican territory, and not merely for the purpose of pursuing marauders and preventing future raids across the border. The de facto government charges by implication which admits of but one interpretation, that this government has as its object territorial aggrandizement even at the expense of a war of aggression against a

neighbor weakened by years of civil strife. The Government of the United States, if it had had designs upon the territory of Mexico, would have had no difficulty in finding during this period of revolution and disorder many plausible arguments for intervention in Mexican affairs. Hoping, however, that the people of Mexico would through their own efforts restore peace and establish an orderly government, the United States has awaited with patience the consummation of the revolution.

When the superiority of the revolutionary faction led by General Carranza became undoubted, the United States, after conferring with six others of the American Republics, recognized unconditionally the present de facto government. It hoped and expected that that government would speedily restore order and provide the Mexican people and others, who had given their energy and substance to the development of the great resources of the republic, opportunity to rebuild in peace and security their shattered fortunes.

This government has waited month after month for the consummation of its hope and expectation. In spite of increasing discouragements, in spite of repeated provocations to exercise force in the restoration of order in the northern regions of Mexico, where American interests have suffered most seriously from lawlessness, the Government of the United States has refrained from aggressive action and sought by appeals and moderate though explicit demands to impress upon the *de facto* government the seriousness of the situation and to arouse it to its duty to perform its international obligations toward citizens of the United States who had entered the territory of Mexico or had vested interests within its boundaries.

In the face of constantly renewed evidences of the patience and restraint of this government in circumstances which only a government imbued with unselfishness and a sincere desire to respect to the full the sovereign rights and national dignity of the Mexican people would have endured, doubts and suspicions as to the motives of the Government of the United States are expressed in your communication of May 22d, for which I can imagine no purpose but to impugn the good faith of this government for I find it hard to believe that such imputations are not universally known to be without the least shadow of justification in fact.

Can the de facto government doubt that, if the United States had turned covetous eyes on Mexican territory, it could have found many pretexts in the past for the gratification of its desire? Can that govern-

ment doubt that months ago, when the war between the revolutionary factions was in progress, a much better opportunity than the present was afforded for American intervention, if such has been the purpose of the United States as the de facto government now insinuates? What motive could this government have had in refraining from taking advantage of such opportunities other than unselfish friendship for the Mexican Republic? I have of course given consideration to your argument that the responsibility for the present situation rests largely upon this government. In the first place, you state that even the American forces along the border whose attention is undivided by other military operations, "Find themselves physically unable to protect effectively the frontier on the American side." Obviously, if there is no means of reaching bands roving on Mexican territory and making sudden dashes at night into American territory it is impossible to prevent such invasions unless the frontier is protected by a cordon of troops. No government could be expected to maintain a force of this strength along the boundary of a nation with which it is at peace for the purpose of resisting the onslaughts of a few bands of lawless men, especially when the neighboring state makes no effort to prevent these attacks. The most effective method of preventing raids of this nature, as past experience has fully demonstrated, is to visit punishment or destruction on the raiders. It is precisely this plan which the United States desires to follow along the border without any intention of infringing upon the sovereign rights of her neighbor, but which, although obviously advantageous to the de facto government, it refuses to allow or even countenance. It is in fact protection to American lives and property about which the United States is solicitous and not the methods or ways in which that protection shall be accomplished. If the Mexican Government is unwilling or unable to give this protection by preventing its territory from being the rendezvous and refuge of murderers and plunderers, that does not relieve this government from its duty to take all the steps necessary to safeguard American citizens on American soil. The United States Government can not and will not allow bands of lawless men to establish themselves upon its borders with liberty to invade and plunder American territory with impunity and, when pursued, to seek safety across the Rio Grande, relying upon the plea of their government that the integrity of the soil of the Mexican Republic must not be violated.

The Mexican Government further protests that it has "made every effort on its part to protect the frontier" and that it is doing "all pos-

sible to avoid a recurrence of such acts." Attention is again invited to the well-known and unrestricted activity of de la Rosa, Ancieto Piscano, Pedro Vino and others in connection with border raids and to the fact that, as I am advised, up to June 4th de la Rosa was still collecting troops at Monterey for the openly avowed purpose of making attacks on Texan border towns and that Pedro Vino was recruiting at other places for the same avowed purpose. I have already pointed out the uninterrupted progress of Villa to and from Columbus, and the fact that the American forces in pursuit of the Glenn Springs marauders penetrated 168 miles into Mexican territory without encountering a single Carrancista soldier. This does not indicate that the Mexican Government is doing "all possible" to avoid further raids; and if it is doing "all possible," this is not sufficient to prevent border raids, and there is every reason, therefore, why this government must take such preventive measures as it deems sufficient.

It is suggested that injuries suffered on account of bandit raids are a matter of "pecuniary reparation" but "never the cause for American forces to invade Mexican soil." The precedents which have been established and maintained by the Government of the Mexican Republic for the last half century do not bear out this statement. It has grown to be almost a custom not to settle depredations of bandits by payments of money alone, but to quell such disorders and to prevent such crimes by swift and sure punishment.

The de facto government finally argues that "if the frontier were duly protected from incursions from Mexico there would be no reason for the existing difficulty"; thus the de facto government attempts to absolve itself from the first duty of any government, namely, the protection of life and property. This is the paramount obligation for which governments are instituted, and governments neglecting or failing to perform it are not worthy of the name. This is the duty for which General Carranza, it must be assumed, initiated his revolution in Mexico and organized the present government and for which the United States Government recognized his government as the de facto government of Mexico. Protection of American lives and property, then, in the United States is first the obligation of this government, and in Mexico is, first, the obligation of Mexico, and second, the obligation of the United States. In securing this protection along the common boundary the United States has a right to expect the cooperation of its neighboring republic; and yet, instead of taking steps to check or punish the raiders, the de facto government demurs and objects to measures taken by the United States. The Government of the United States does not wish to believe that the de facto government approves these marauding attacks, yet as they continue to be made, they show that the Mexican Government is unable to repress them. This inability, as this government has had occasion in the past to say, may excuse the failure to check the outrages complained of, but it only makes stronger the duty of the United States to prevent them, for if the Government of Mexico can not protect the lives and property of Americans, exposed to attack from Mexicans, the Government of the United States is in duty bound, so far as it can, to do so.

In conclusion, the Mexican Government invites the United States to support its "assurances of friendship with real and effective acts" which "can be no other than the immediate withdrawal of the American troops." For the reasons I have herein fully set forth, this request of the de facto government can not now be entertained. The United States has not sought the duty which has been forced upon it of pursuing bandits who under fundamental principles of municipal and international law, ought to be pursued and arrested and punished by Mexican authorities. Whenever Mexico will assume and effectively exercise that responsibility the United States, as it has many times before publicly declared, will be glad to have this obligation fulfilled by the de facto government of Mexico. If, on the contrary, the de facto government is pleased to ignore this obligation and to believe that "in case of a refusal to retire these troops there is no further recourse than to defend its territory by an appeal to arms," the Government of the United States would surely be lacking in sincerity and friendship if it did not frankly impress upon the de facto government that the execution of this threat will lead to the gravest consequences. While this government would deeply regret such a result, it cannot recede from its settled determination to maintain its national rights and to perform its full duty in preventing further invasions of the territory of the United States and in removing the peril which Americans along the international boundary have borne so long with patience and forbearance.

Accept, etc.,

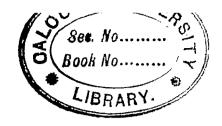
ROBERT LANSING.



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RECOMMENDATIONS OF THE ECONOMIC CONFERENCE OF THE ALLIED GOVERNMENTS $^{\mathrm{1}}$

(Translation)

Paris, June 17, 1916.

The representatives of the Allied Governments have met in Paris, Mr. Clémentel, Minister of Commerce, presiding, on the 14th, 15th, 16th, and 17th of June, 1916, for the purpose of fulfilling the mandate which was confided to them by the conference of Paris on March 28, 1916, to put into practice their solidarity of views and interests and to propose to their respective governments suitable measures for realizing this solidarity.

They perceive that the Central Powers of Europe, after having imposed upon them their military struggle in spite of all their efforts to avoid the conflict, are preparing to-day, in concert with their allies, a struggle in the economic domain which will not only survive the reestablishment of peace but, at that very moment, will assume all its amplitude and all its intensity.

They can not in consequence conceal from themselves that the agreement which is being prepared for this purpose amongst their enemies has for its evident object the establishment of their domination over the production and the markets of the whole world and to impose upon the other countries an inacceptable hegemony.

In the face of such a grave danger, the representatives of the Allied Governments consider that it is their duty, on the grounds of necessary and legitimate defense, to take and realize from now onward all the measures requisite on the one hand to secure for themselves and the whole of the markets of neutral countries full economic independence and respect for sound commercial practice, and on the other to facilitate the organization on a permanent basis of this economic alliance. For

¹ Transmitted by the American Ambassador at Paris and published by the Department of State.

this purpose the representatives of the Allied Governments have decided to submit for the approval of their governments the following resolutions:

A

Measures For War Period.

T

Laws and regulations prohibiting trading with the enemy shall be brought into accord, for this purpose:

- a. The Allies will prohibit their own subjects and citizens and all persons residing in their territories from carrying on any trade with the inhabitants of enemy countries of whatever nationality, or with enemy subjects, wherever resident, persons, firms, and companies whose business is controlled wholly or partially by enemy subjects or subject to enemy influence, whose names will be included in a special list.
- b. The Allies will also prohibit importation into their territories of all goods originating or coming from enemy countries.
- c. The Allies will further devise means of establishing a system of enabling contracts entered into with enemy subjects and injurious to national interests to be canceled unconditionally.

TT

Business undertakings, owned or operated by enemy subjects in the territories of the Allies, are all to be sequestrated or placed under control. Measures will be taken for the purpose of winding up some of these undertakings and realizing the assets, the proceeds of such realizations remaining sequestrated or under control. In addition, by export prohibitions, which are necessitated by the internal situation of each of the allied countries, the Allies will complete the measures already taken for the restriction of enemy supplies both in the mother countries and the dominions, colonies, and protectorates—

- 1. By unifying lists of contraband and export prohibition, particularly by prohibiting the export of all commodities declared absolute or conditional contraband:
- 2. By making the grant of licenses to export to neutral countries, from which export to the enemy territories might take place, conditional upon the existence in such countries of control organizations approved by the Allies, or, in the absence of such organizations, upon special

guarantees, such as the limitation of the quantities to be exported and supervision by allied consular officers, etc.

В

Transitory Measures For The Period of The Commercial, Industrial, Agricultural, and Maritime Reconstruction of The Allied Countries.

T

The Allies declare their common determination to insure the reëstablishment of the countries suffering from acts of destruction, spoliation, and unjust requisition, and they decide to join in devising means to secure the restoration to those countries, as a prior claim, of their raw materials, industrial, agricultural plant and stock, and mercantile fleet, or to assist them to reëquip themselves in these respects.

 Π

Whereas the war has put an end to all treaties of commerce between the Allies, and enemy Powers, and it is of essential importance that during the period of economic reconstruction the liberty of none of the Allies should be hampered by any claim put forward by enemy Powers to most favored nation treatment, the Allies agree that the benefit of this treatment will not be granted to those Powers during a number of years, to be fixed by mutual agreement among themselves.

During this number of years the Allies undertake to assure each other, so far as possible, compensatory outlets for trade in case consequences detrimental to their commerce should result from the application of the undertaking referred to in the preceding clause.

\mathbf{III}

The Allies declare themselves agreed to conserve for the allied countries, before all others, their natural resources during the whole period of the commercial, industrial, agricultural, and maritime reconstruction, and for this purpose they undertake to establish special arrangements to facilitate the interchange of these resources.

IV

In order to defend their commerce and industry and their agriculture and navigation against economic aggression, resulting from dumping or any other mode of unfair competition, the Allies decide to fix by agreement a period of time during which commerce with the enemy Powers will be submitted to special treatment, and goods, originating from their countries, will be subjected either to prohibitions or to a special régime of an effective character. The Allies will determine by agreement, through diplomatic channels, the special conditions to be imposed during the above-mentioned period on the ships of enemy powers.

v

The Allies will devise measures to be taken jointly or severally for preventing enemy subjects from exercising in their territories certain industries or professions which concern national defense or economic independence.

 \mathbf{C}

Permanent Measures of Mutual Assistance and Collaboration Among
The Allies

T

The Allies decide to take the necessary steps without delay to render themselves independent of enemy countries in so far as regards raw materials and manufactured articles essential to the normal development of their economic activities. These measures will be directed to assuring the independence of the Allies, not only so far as concerns sources of supply, but also as regards their financial, commercial, and maritime organization. The Allies will adopt such measures as seem to them most suitable for the carrying out of this resolution according to the nature of the commodities and having regard to the principles which govern their economic policy. They may, for example, have recourse to either enterprises subsidized and directed or controlled by the governments themselves or to the grant of financial assistance for the encouragement of scientific and technical research and the development of national industries and resources, or to customs duties or prohibitions of a temporary or permanent character, or to a combination of these different methods.

Whatever may be the methods adopted, the object aimed at by the Allies is to increase the production within their territories as a whole to a sufficient extent to enable them to maintain and develop their economic position and independence in relation to enemy countries.

 \mathbf{II}

In order to permit the interchange of their products, the Allies undertake to adopt measures facilitating mutual trade relations, both by the establishment of direct and rapid land and sea transport service at low rates and by the extension and improvement of postal, telegraphic, and other communications.

Ш

The Allies undertake to convene a meeting of technical delegates to draw up measures for the assimilation, so far as may be possible, of their laws governing patents, indications of origin and trade marks. In regard to patents, trade marks, literary and artistic copyright which come into existence during the war in enemy countries, the Allies will adopt, so far as possible, an identical procedure to be applied as soon as hostilities cease. This procedure will be elaborated by the technical delegates of the Allies.

D

Whereas for the purpose of their common defense against the enemy, the Allied Powers have agreed to adopt a common economic policy on the lines laid down in the resolutions which have been passed; and whereas it is recognized that the effectiveness of this policy depends absolutely upon these resolutions being put into operation forthwith, the representatives of the Allied Governments undertake to recommend that their respective Governments shall take, without delay, all the measures, whether temporary or permanent, requisite to giving full and complete effect to this policy forthwith, and to communicate to each other the decisions arrived at to attain the object.

Paris, June 17, 1916.

Have signed these resolutions:

FOR FRANCE.

M. E. CLEMENTEL,
 Ministre du Commerce et de l'Industrie.
 M. G. DOUMERGUE,
 Ministre des Colonies.

M. M. SEMBAT,

Ministre des Travaux Publics.

M. A. METIN,

Ministre du Travail et de la Prévoyance Sociale.

M. J. THIERRY,

Sous-Secrétaire d'Etat de la Guerre (Service de l'Intendance).

M. L. NAIL,

Sous-Secrétaire d'Etat de la Marine (Marine marchande).

M. J. CAMBON,

Ambassadeur de France, Secrétaire Général du Ministère des Affaires etrangères.

M. A. MASSE,

Secrétaire Général du Ministère de l'Agriculture.

M. J. Branet,

Directeur Général des Douanes.

M. P. DE MARGERIE,

Ministre Plénipotentiaire, Directeur des Affaires Politiques et Commerciales au Ministère des Affaires étrangères.

FOR BELGIUM.

M. DE BROQUEVILLE,

Président du Conseil, Ministre de la Guerre.

M. le Baron Beyens,

Ministre des Affaires étrangères.

M. VAN DE VYVERE,

Ministre des Finances.

M. le Comte Goblet d'Alviella,

Membre du Conseil des Ministres.

FOR GREAT BRITAIN.

M. le Marquis de Crewe,

Lord President du Conseil privé.

M. A. Bonar Law,

Ministre des Colonies.

M. W. M. HUGHES,

Premier Ministre d'Australie.

Sir George Foster,

Ministre du Commerce du Canada.

FOR ITALY.

S. Exc. M. TITTONI,

Ambassadeur d'Italie d Paris.

M. Daneo,

Ministre des Finances.

FOR JAPAN.

M. le Baron Sakatani, Ancien Ministre des Finances.

FOR PORTUGAL.

M. le Docteur Alfonso Costa,
 Ministre des Finances.
M. le Docteur Augusto Soares,
 Ministre des Affaires étrangères.

FOR RUSSIA.

M. Pokrowsky, Contrôleur de l'Empire, Conseiller privé.

M. PRILEJAIEFF,

Adjoint au Ministre du Commerce et de l'Industrie, Conseiller privé.

FOR SERVIA.

M. MARINKOVITCH,

Ministre du Commerce.

TREATY BETWEEN HAITI AND THE UNITED STATES REGARDING THE FINANCES, ECONOMIC DEVELOPMENT AND TRANQUILLITY OF HAITI

Signed at Port-au-Prince, September 16, 1915; ratifications exchanged, May 3, 1916

PREAMBLE

The United States and the Republic of Haiti desiring to confirm and strengthen the amity existing between them by the most cordial coöperation in measures for their common advantage;

And the Republic of Haiti desiring to remedy the present condition of its revenues and finances, to maintain the tranquillity of the Republic, to carry out plans for the economic development and prosperity of the Republic and its people;

And the United States being in full sympathy with all of these aims and objects and desiring to contribute in all proper ways to their accomplishment;

The United States and the Republic of Haiti have resolved to conclude a convention with these objects in view, and have appointed for that purpose, plenipotentiaries,

The President of the United States, Robert Beale Davis, Junior, Chargé d'Affaires of the United States;

And the President of the Republic of Haiti, Louis Borno, Secretary of State for Foreign Affairs and Public Instruction, who, having exhibited to each other their respective powers, which are seen to be full in good and true form, have agreed as follows:

ARTICLE I

The Government of the United States will, by its good offices, aid the Haitian Government in the proper and efficient development of its agricultural, mineral and commercial resources and in the establishment of the finances of Haiti on a firm and solid basis.

ARTICLE II

The President of Haiti shall appoint, upon nomination by the President of the United States, a General Receiver and such aids and employ-

¹ U. S. Treaty Series, No. 623.

ees as may be necessary, who shall collect, receive and apply all customs duties on imports and exports accruing at the several custom houses and ports of entry of the Republic of Haiti.

The President of Haiti shall appoint, upon nomination by the President of the United States, a Financial Adviser, who shall be an officer attached to the Ministry of Finance, to give effect to whose proposals and labors the Minister will lend efficient aid. The Financial Adviser shall devise an adequate system of public accounting, aid in increasing the revenues and adjusting them to the expenses, inquire into the validity of the debts of the Republic, enlighten both governments with reference to all eventual debts, recommend improved methods of collecting and applying the revenues, and make such other recommendations to the Minister of Finance as may be deemed necessary for the welfare and prosperity of Haiti.

ARTICLE III

The Government of the Republic of Haiti will provide by law or appropriate decrees for the payment of all customs duties to the General Receiver, and will extend to the Receivership, and to the Financial Adviser, all needful aid and full protection in the execution of the powers conferred and duties imposed herein; and the United States on its part will extend like aid and protection.

ARTICLE IV

Upon the appointment of the Financial Adviser, the Government of the Republic of Haiti, in cooperation with the Financial Adviser, shall collate, classify, arrange and make full statement of all the debts of the Republic, the amounts, character, maturity and condition thereof, and the interest accruing and the sinking fund requisite to their final discharge.

ARTICLE V

All sums collected and received by the General Receiver shall be applied, first to the payment of the salaries and allowances of the General Receiver, his assistants and employees and expenses of the Receivership, including the salary and expenses of the Financial Adviser, which salaries will be determined by previous agreement; second, to the interest and sinking fund of the public debt of the Republic of Haiti; and, third, to the maintenance of the constabulary referred to in Article X,

and then the remainder to the Haitian Government for purposes of current expenses.

In making these applications the General Receiver will proceed to pay salaries and allowances monthly and expenses as they arise, and on the first of each calendar month, will set aside in a separate fund the quantum of the collection and receipts of the previous month.

ARTICLE VI

The expenses of the Receivership, including salaries and allowances of the General Receiver, his assistants and employees, and the salary and expenses of the Financial Adviser, shall not exceed five per centum of the collections and receipts from customs duties, unless by agreement by the two governments.

ARTICLE VII

The General Receiver shall make monthly reports of all collections, receipts and disbursements to the appropriate officer of the Republic of Haiti and to the Department of State of the United States, which reports shall be open to inspection and verification at all times by the appropriate authorities of each of the said governments.

ARTICLE VIII

The Republic of Haiti shall not increase its public debt except by previous agreement with the President of the United States, and shall not contract any debt or assume any financial obligation unless the ordinary revenues of the Republic available for that purpose, after defraying the expenses of the government, shall be adequate to pay the interest and provide a sinking fund for the final discharge of such debt.

ARTICLE IX

The Republic of Haiti will not without a previous agreement with the President of the United States, modify the customs duties in a manner to reduce the revenues therefrom; and in order that the revenues of the Republic may be adequate to meet the public debt and the expenses of the government, to preserve tranquillity and to promote material prosperity, the Republic of Haiti will cooperate with the Financial Adviser in his recommendations for improvement in the methods of collecting and disbursing the revenues and for new sources of needed income.

ARTICLE X

The Haitian Government obligates itself, for the preservation of domestic peace, the security of individual rights and full observance of the provisions of this treaty, to create without delay an efficient constabulary, urban and rural, composed of native Haitians. This constabulary shall be organized and officered by Americans, appointed by the President of Haiti, upon nomination by the President of the United States. The Haitian Government shall clothe these officers with the proper and necessary authority and uphold them in the performance of their functions. These officers will be replaced by Haitians as they, by examination, conducted under direction of a board to be selected by the senior American officer of this constabulary and in the presence of a representative of the Haitian Government, are found to be qualified to assume The constabulary herein provided for, shall, under the direction of the Haitian Government, have supervision and control of arms and ammunition, military supplies, and traffic therein, throughout the country. The high contracting parties agree that the stipulations in this article are necessary to prevent factional strife and disturbances.

ARTICLE XI

The Government of Haiti agrees not to surrender any of the territory of the Republic of Haiti by sale, lease, or otherwise, or jurisdiction over such territory, to any foreign government or power, nor to enter into any treaty or contract with any foreign power or powers that will impair the independence of Haiti.

ARTICLE XII

The Haitian Government agrees to execute with the United States a protocol for the settlement, by arbitration or otherwise, of all pending pecuniary claims of foreign corporations, companies, citizens or subjects against Haiti.

ARTICLE XIII

The Republic of Haiti, being desirous to further the development of its natural resources, agrees to undertake and execute such measures as in the opinion of the high contracting parties may be necessary for the sanitation and public improvement of the Republic under the supervision and direction of an engineer or engineers, to be appointed by the President of Haiti upon nomination by the President of the United States, and authorized for that purpose by the Government of Haiti.

ARTICLE XIV

The high contracting parties shall have authority to take such steps as may be necessary to insure the complete attainment of any of the objects comprehended in this treaty; and, should the necessity occur, the United States will lend an efficient aid for the preservation of Haitian independence and the maintenance of a government adequate for the protection of life, property and individual liberty.

ARTICLE XV

The present treaty shall be approved and ratified by the high contracting parties in conformity with their respective laws, and the ratifications thereof shall be exchanged in the City of Washington as soon as may be possible.

ARTICLE XVI

The present treaty shall remain in full force and virtue for the term of ten years, to be counted from the day of exchange of ratifications, and further for another term of ten years if, for specific reasons presented by either of the high contracting parties, the purpose of this treaty has not been fully accomplished.

In faith whereof, the respective plenipotentiaries have signed the present convention in duplicate, in the English and French languages, and have thereunto affixed their seals.

Done at Port-au-Prince, Haiti, the 16th day of September in the year of our Lord one thousand nine hundred and fifteen.

ROBERT BEALE DAVIS, JR. [SEAL.]

Chargé d'Affaires of the United States.

LOUIS BORNO, [SEAL.]

Secrétaire d'Etat des Relations Extérieures et de l'Instruction Publique.

AGREEMENT BETWEEN RUSSIA AND JAPAN 1

Signed at Petrograd, July 3/ June 20, 1916.

The Imperial Governments of Japan and Russia, having resolved by united efforts to maintain permanent peace in the Far East, have agreed upon the following:

ARTICLE I

Japan will not become party to any arrangement or political combination directed against Russia.

Russia will not become party to any arrangement or political combination directed against Japan.

ARTICLE II

In case the territorial rights or special interests in the Far East of one of the contracting parties recognized by the other contracting party are menaced, Japan and Russia will act in concert on the measures to be taken in view of the support or coöperation necessary for the protection and defence of these rights and interests.

In faith of which the undersigned, duly authorized by their respective governments, have signed this convention and thereto affixed their seals.

Done at Petrograd, the third day of the seventh month of the fifth year of Taisho, corresponding to the 3rd of July/20th June, 1916.

I. Motono. Sazonow.

AGREEMENT BETWEEN MONGOLIA AND RUSSIA

Signed at Urga, October 21/November 3, 1912.2

In accordance with the desire unanimously expressed by the Mongolians to maintain the national and historic constitution of their country, the Chinese troops and authorities were obliged to evacuate Mongolian territory, and Djebzoun Damba-Khutukhta was proclaimed Ruler of the Mongolian people. The old relations between Mongolia and China thus came to an end.

¹ Translation of the official text published in the Japan Times, July 9, 1916.

² British Parliamentary Paper, Cd. 6604.

At the present moment, taking into consideration the facts stated above, as well as the mutual friendship which has always existed between the Russian and Mongolian nations, and in view of the necessity of defining exactly the system regulating trade between Russia and Mongolia;

The Actual State Councillor Jean Korostovetz, duly authorized for the purpose by the Imperial Russian Government; and

The Protector of the Ten Thousand Doctrines Sain-noin Khan Namnan-Souroun, President of the Council of Ministers of Mongolia;

The Plenipotentiary Tchin-souzouktou Tzin-van Lama Tzerin-Tchimet, Minister of the Interior;

The plenipotentiary Daitzin-van Handa-dorji, of the rank of Khanerdeni, Minister for Foreign Affairs;

The Plenipotentiary Daitzin-van Handa-dorki, of the rank of Khan-erdeni, Minister for Foreign Affairs;

The Plenipotentiary Erdeni Dalai Tzun-van Gombo-Souroun, Minister of War;

The Plenipotentiary Touchetou Tzun-van Tchakdorjab, Minister of Finance; and

The Plenipotentiary Erdeni Tzum-van Namsarai, Minister of Justice; Duly authorized by the Ruler of the Mongolian nation, by the Mongolian Government and by the ruling Princes, have agreed as follows:

ARTICLE 1.

The Imperial Russian Government shall assist Mongolia to maintain the autonomous régime which she has established, as also the right to have her national army, and to admit neither the presence of Chinese troops on her territory nor the colonization of her land by the Chinese.

ARTICLE 2.

The Ruler of Mongolia and the Mongolian Government shall grant, as in the past, to Russian subjects and trade the enjoyment in their possessions of the rights and privileges enumerated in the protocol annexed hereto.³

It is well understood that there shall not be granted to other foreign subjects in Mongolia rights not enjoyed there by Russian subjects.

³ Printed herein, p. 241.

ARTICLE 3.

If the Mongolian Government finds it necessary to conclude a separate treaty with China or another foreign Power, the new treaty shall in no case either infringe the clauses of the present agreement and of the protocol annexed thereto, or modify them without the consent of the Imperial Russian Government.

ARTICLE 4.

The present amicable agreement shall come into force from the date of its signature.

In witness whereof the respective plenipotentiaries, having compared the two texts, Russian and Mongolian, of the present agreement, made in duplicate, and having found the two texts to correspond, have signed them, have affixed thereto their seals, and have exchanged texts.

Done at Urga on the 21st October, 1912, corresponding to the 24th day of the last autumn month of the 2nd year of the reign of the Unanimously Proclaimed, according to the Mongolian calendar.

PROTOCOL ANNEXED TO RUSSO-MONGOLIAN AGREEMENT OF OCTOBER 21/ NOVEMBER, 3, 1912.

Signed at Urga, October 21/ November 3, 1912.

By virtue of the enactment of the second article of the agreement, signed on this day between Actual State Councillor, Ivan Korostovets, Plenipotentiary of the Imperial Russian Government, and the President of the Council of Ministers of Mongolia, Sain-noin Khan Namnam-Souroun, the Protector of Ten Thousand Doctrines; the Plenipotentiary and Minister of the Interior, Tchin-souzouktou Tzin-van Lama Tzerin-Tchimet; the Plenipotentiary and Minister for Foreign Affairs, Daitzin-van Handa-dorji of the rank of Khan-erdeni; the Plenipotentiary and Minister of War, Erdenia Dalai Tzun-van Gombo-Souroun; the Plenipotentiary and Minister of Justice, Erdeni Tzun-van Namsarai, on the authority of the Ruler of Mongolia, the Mongolian Government, and the ruling Princes; the above-named plenipotentiaries have come to an agreement respecting the following articles, in which are set forth the rights and privileges of Russian subjects in Mongolia,

some of which they already enjoy, and the rights and privileges of Mongolian subjects in Russia:

ARTICLE 1.

Russian subjects, as formerly, shall enjoy the right to reside and move freely from one place to another throughout Mongolia; to engage there in any kind of commercial, industrial, and other business; and to enter into agreements of various kinds, whether with individuals, or firms, or institutions, official or private, Russian, Mongolian, Chinese, or foreign.

ARTICLE 2.

Russian subjects, as formerly, shall enjoy the right at all times to import and export, without payment of import and export dues, every kind of product of the soil and industry of Russia, Mongolia and China, and other countries, and to trade freely in it without payment of any duties, taxes, or other dues.

The enactments of this (2nd) article shall not extend to combined Russo-Chinese undertakings, or to Russian subjects falsely declaring themselves to be owners of wares not their property.

ARTICLE 3.

Russian credit institutions shall have the right to open branches in Mongolia, and to transact all kinds of financial and other business, whether with individuals, institutions, or companies.

ARTICLE 4.

Russian subjects may conclude purchases and sales in cash or by an exchange of wares (barter), and they may conclude agreements on credit. Neither "khoshuns" nor the Mongolian Treasury shall be held responsible for the debts of private individuals.

ARTICLE 5.

The Mongolian authorities shall not preclude Mongolians or Chinese from completing any kind of commercial agreement with Russian subjects, from entering into their personal service, or into commercial and industrial undertakings formed by them. No rights of monopoly as regards commerce or industry shall be granted to any official or private

companies, institutions, or individuals in Mongolia. It is, of course, understood that companies and individuals who have already received such monopolies from the Mongolian Government previous to the conclusion of this agreement shall retain their rights and privileges until the expiry of the period fixed.

ARTICLE 6.

Russian subjects shall be everywhere granted the right, whether in towns or "khoshuns," to hold allotments on lease, or to acquire them as their own property for the purpose of organizing commercial industrial establishments, and also for the purpose of constructing houses, shops, and stores. In addition, Russian subjects shall have the right to lease vacant lands for cultivation. It is, of course, understood that these allotments shall be obtained and leased for the above-specified purposes, and not for speculative aims. These allotments shall be assigned by agreement with the Mongolian Government in accordance with existing laws of Mongolia, everywhere excepting in sacred places and pasture lands.

ARTICLE 7.

Russian subjects shall be empowered to enter into agreements with the Mongolian Government respecting the working of minerals and timber, fisheries, etc.

ARTICLE 8.

The Russian Government shall have the right, in agreement with the Government of Mongolia, to appoint consuls in those parts of Mongolia it shall deem necessary.

Similarly, the Mongolian Government shall be empowered to have government agents at those frontier parts of the empire where, by mutual agreement, it shall be found necessary.

ARTICLE 9.

At points where there are Russian consulates, as also in other localities of importance for Russian trade, there shall be allotted, by mutual agreement between Russian consuls and the Mongolian Government, special "factories" for various branches of industry and the residence of Russian subjects. These "factories" shall be under the exclusive control of the above-mentioned consuls, or the heads of the Russian commercial companies if there be no Russian consul.

ARTICLE 10.

Russian subjects, in agreement with the Mongolian Government, shall retain the right to institute, at their own cost, a postal service for the dispatch of letters and the transit of wares between various localities in Mongolia and also between specified localities and points on the Russian frontier. In the event of the construction of "stages" and other necessary buildings, the regulations set forth in Article 6 of this protocol must be duly observed.

ARTICLE 11.

Russian consuls in Mongolia, in case of need, shall avail themselves of Mongolian Government postal establishments and messengers for the dispatch of official correspondence, and for other official requirements, provided that the gratuitous requisition for this purpose shall not exceed one hundred horses and thirty camels per month. On every occasion, a courier's passport must be obtained from the Government of Mongolia. When traveling, Russian consuls, and Russian officials in general, shall avail themselves of the same establishments upon payment. The right to avail themselves of Mongolian Government "stages" shall be extended to private individuals, who are Russian subjects, upon payment for the use of such "stages" of amounts which shall be determined in agreement with the Mongolian Government.

ARTICLE 12.

Russian subjects shall be granted the right to sail their own merchant vessels on, and to trade with the inhabitants along the banks of, those rivers and their tributaries which, running first through Mongolia, subsequently enter Russian territory. The Russian Government shall afford the Government of Mongolia assistance in the improvement of navigation on these rivers, the establishment of the necessary beacons, etc. The Mongolian Government authorities shall assign on these rivers places for the berthing of vessels, for the construction of wharves and warehouses, for the preparation of fuel, etc., being guided on these occasions by the enactments of Article 6 of the present protocol.

ARTICLE 13.

Russian subjects shall have the right to avail themselves of all land and water routes for the carriage of wares and the droving of cattle, and, upon agreement with the Mongolian authorities, they may construct, at their own cost, bridges, ferries, etc., with the right to exact a special due from persons crossing over.

ARTICLE 14.

Traveling cattle, the property of Russian subjects, may stop for the purpose of resting and feeding. In the event of prolonged halts being necessary, the local authorities shall assign proper pasturage areas along traveling cattle routes, and at cattle markets. Fees shall be exacted for the use of these pasturing areas for periods exceeding three months.

ARTICLE 15.

The established usage of the Russian frontier population harvesting (hay), as also hunting and fishing, across the Mongolian borders shall remain in force in the future without any alteration.

ARTICLE 16.

Agreements between Russian subjects and institutions on the one side and Mongolians and Chinese on the other may be concluded verbally or in writing, and the contracting parties may present the agreement concluded to the local government authorities for certification. Should the latter see any objection to certifying the contract, they must immediately notify the fact to a Russian consul, and the misunderstanding which has arisen shall be settled in agreement with him.

It is hereby laid down that contracts respecting real estate must be in written form, and presented for certification and confirmation to the proper Mongolian Government authorities and a Russian consul. Documents bestowing rights to exploit natural resources require the confirmation of the Government of Mongolia.

In the event of disputes arising over agreements concluded verbally or in writing, the parties may settle the matter amicably with the assistance of arbitrators selected by each party. Should no settlement be reached by this method, the matter shall be decided by a mixed legal commission.

There shall be both permanent and temporary mixed legal commissions. Permanent commissions shall be instituted at the places of residence of Russian consuls, and shall consist of the consul, or his representative, and a delegate of the Mongolian authorities of corresponding rank. Temporary commissions shall be instituted at places other than those already specified, as cases arise, and shall consist of representatives of a Russian consul and the prince of that "khoshun" to which the defendant belongs or in which he resides. Mixed commissions shall be empowered to call in as experts persons with a knowledge of the case from among Russian subjects, Mongolians, and Chinese. The decisions of the mixed legal commissions shall be put into execution without delay, in the case of Russian subjects through a Russian consul, and in the case of Mongolians and Chinese through the prince of the "khoshun" to which the defendant belongs or in which he is resident.

ARTICLE 17.

The present protocol shall come into force from the date of its signature.

In witness whereof, the respective plenipotentiaries, finding, upon comparison of the two parallel texts of the present protocol—Russian and Mongol—drawn up in duplicate, that the texts correspond, have signed each of them, affixed their seals, and exchanged texts.

Executed at Urga, the 21st October, 1912 (o. s.), and by the Mongolian calendar, on the twenty-fourth day of the last autumn moon, in the second year of the administration of the Unanimously Proclaimed.

In the original follow the signature of M. Korostovets, Minister Plenipotentiary; and in the Mongol language the signatures of the President of the Mongolian Council of Ministers, and the Plenipotentiaries, the Ministers of the Interior, Foreign Affairs, War, Finance, and of Justice.

DECLARATION AND EXCHANGE OF NOTES BY RUSSIA AND CHINA. 1

Signed at Peking, October 23/ November 5, 1913.

The Imperial Government of Russia having formulated the principles which it took as the basis of its relations with China as regards Outer Mongolia, and the Government of the Chinese Republic having stated its approval of the said principles, the two governments have agreed upon the following:

¹ Translated from the Chinese Year Book, 1914, pp. 633-635.

T.

Russia recognizes that Outer Mongolia is under the suzerainty of China.

II.

China recognizes the autonomy of Outer Mongolia.

III.

Recognizing the exclusive right of the Mongols of Outer Mongolia to provide for the internal administration of Autonomous Mongolia and to settle all questions of a commercial and industrial nature relating to this country, China binds itself not to intervene in these matters and consequently will not send troops into Outer Mongolia, nor will it keep any civil or military official there, and it will abstain from colonizing in this country. It is, however, understood that a Dignitary sent by the Chinese Government may reside at Urga, accompanied by the necessary subordinates and an escort. Moreover, the Chinese Government may, in case of need, keep in certain localities of Outer Mongolia, to be determined in the course of the conferences provided for in Article V of the present agreement, agents for the protection of the interests of its subjects. Russia, on its side, binds itself not to keep troops in Outer Mongolia, with the exception of consular guards, and not to intervene in any branch of the administration of this country and to abstain from colonizing.

IV.

China declares itself ready to accept the good offices of Russia for the establishment of its relations with Outer Mongolia, in conformity with the principles above set forth and with the stipulations of the Russo-Mongolian Commercial Protocol of October 21, 1912 (November 3, 1912).²

V.

Questions pertaining to the interests of Russia and of China in Outer Mongolia and resulting from the new state of affairs in this country will be the subject of subsequent conferences.

In faith whereof the undersigned, duly authorized to this effect, have signed the present Declaration and have affixed their seals thereto.

² Printed in this Supplement, p. 241.

Done at Pekin, in duplicate, October 23/ November 5, nineteen hundred and thirteen, corresponding to the fifth day of the eleventh month of the second year of the Chinese Republic.

(Signed) Sun Pao-Chi. L. S. (Signed) B. Krupensky. L. S.

Note of the Russian Minister at Peking to the Chinese Minister for Foreign Affairs.

In signing the Declaration under date of this day relating to Outer Mongolia, the undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of all the Russias, duly authorized to this effect, has the honor to declare, in the name of his government, to His Excellency Mr. Sun Pao-Chi, Minister of Foreign Affairs of the Chinese Republic, the following:

- 1. Russia recognizes that the territory of Outer Mongolia is a part of the territory of China.
- 2. As regards questions of a political and territorial nature, the Chinese Government shall come to an agreement with the Russian Government through negotiations in which the authorities of Outer Mongolia shall take part.
- 3. The conferences provided for in Article V of the Declaration shall take place between the three interested parties, who shall designate for this purpose a place where their delegates shall meet.
- 4. Outer Mongolia shall comprise the regions which have been under the jurisdiction of the Chinese Amban of Urga, of the Tartar General of Ouliassoutai, and of the Chinese Amban of Kobdo. Inasmuch as there are no detailed maps of Mongolia and as the boundaries of the administrative divisions of this country are uncertain, it is agreed that the exact boundaries of Outer Mongolia, as well as the boundary between the district of Kobdo and the district of Altai, shall be the subject of the subsequent conferences provided for in Article V of the Declaration.

The undersigned takes advantage of this opportunity to repeat to His Excellency Mr. Sun Pao-Ki the assurances of his very high consideration.

(Signed) B. Krupensky.

Note of the Chinese Minister for Foreign Affairs to the Russian Minister at Peking.

In signing the Declaration under date of this day relating to Outer Mongolia, the undersigned, Minister of Foreign Affairs of the Chinese Republic, duly authorized to this effect, has the honor to declare, in the name of his government, to his Excellency Mr. Krupensky, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of all the Russias, the following:

- 1. Russia recognizes that the territory of Outer Mongolia is a part of the territory of China.
- 2. As regards questions of a political and territorial nature, the Chinese Government shall come to an agreement with the Russian Government through negotiations in which the authorities of Outer Mongolia shall take part.
- 3. The conferences provided for in Article V of the Declaration shall take place between the three interested parties, who shall designate for this purpose a place where their delegates shall meet.
- 4. Outer Mongolia shall comprise the regions which have been under the jurisdiction of the Chinese Amban of Urga, of the Tartar General of Ouliassoutai, and of the Chinese Amban of Kobdo. Inasmuch as there are no detailed maps of Mongolia and as the boundaries of the administrative divisions of this country are uncertain, it is agreed that the exact boundaries of Outer Mongolia, as well as the boundary between the district of Kobdo and the district of Altai, shall be the subject of subsequent conferences provided for in Article V of the Declaration.

The undersigned takes advantage of this opportunity to repeat to His Excellency Mr. Krupkensky the assurances of his very high consideration.

(Signed) SUN PAO-CHI.

THE RUSSO-MONGOLIAN RAILWAY AGREEMENT 1

Signed at Kiachta, Sept. 30, 1914.

ARTICLE 1.

The Russian Government hereby recognizes the permanent right of the Mongolian Government to build railways within the boundaries of its own territory.

¹ Peking Gazette, Dec. 8, 1914.

ARTICLE 2.

The Russian and Mongolian Governments shall consult each other to decide the railway lines and procedure of their building, which should be carried out in such a way as to benefit both parties concerned.

ARTICLE 3.

In case of railway building, whether financed by the Russian or Mongolian Government or by private persons, the Russian Government shall render adequate help to the Mongolian Government.

ARTICLE 4.

When such railways as will connect with the railways on Russian frontiers are to be built, the Russian and Mongolian Governments shall consult each other on the terms concerning the privileges, localities and railway revenue regarding the same.

ARTICLE 5.

Whereas the Mongolian Government has the right to build railways within the boundaries of its own territory, if it can raise funds internally to build paying railways, the Russian Government shall not interfere with it. But should the Mongolian Government concede such rights to other countries, the Mongolian Government, for the sake of friendly relations with Russia, should discuss this matter with the Russian Government, before the former makes the actual concession, in order to ascertain whether the projected line or lines of railway would jeopardize the Russian interest from an economical or military standpoint.

ARTICLE 6.

This treaty shall be duplicated in both the Mongolian and Russian languages. One copy shall be deposited in the office of the Russian Consul-General in Mongolia and the other in the office of the Ministry of Foreign Affairs of the Mongolian Government.

AGREEMENT BETWEEN CHINA, RUSSIA AND MONGOLIA

Signed at Kiachta, June 7/ May 25, 1915.

The President of the Republic of China,

His Imperial Majesty, the Emperor of all the Russias, and

His Holiness the Bogdo (Great) Cheptsun (Venerable) Damba (Sacred) Hut'ukht'u (Reincarnated) Khan (Ruler) of Outer Mongolia,

Animated by a sincere desire to settle by mutual agreement various questions created by a new state of things in Outer Mongolia, have named for that purpose their plenipotentiary delegates, that is to say:

The President of the Republic of China, General Pi Kuei-fang and Monsieur Ch'ên Lu, Envoy Extraordinary and Minister Plenipotentiary of China to Mexico;

His Imperial Majesty the Emperor of all the Russias, His Councillor of State Alexandre Miller, Diplomatic Agent and Consul-General in Mongolia; and

His Holiness the Bogdo Cheptsun Damba Hut'ukht'u Kahn of Outer Mongolia, E'êrh-tê-ni Cho-nang Pei-tzu Sê-lêng-tan, Vice-Chief of Justice, and T'uhsieh-t'u Ch'in Wang Ch'a-K'o-tu-êrh-cha-pu, Chief of Finance.

Who having verified their respective full powers found in good and due form, have agreed upon the following:

ARTICLE I.

Outer Mongolia recognizes the Sino-Russian Declaration and the Notes exchanged between China and Russia of the 5th day of the 11th month of the 2nd year of the Republic of China (23 October 1913) ¹

ARTICLE II.

Outer Mongolia recognizes China's suzerainty. China and Russia recognize the autonomy of Outer Mongolia forming part of Chinese territory.

ARTICLE III.

Autonomous Mongolia has no right to conclude international treaties with foreign Powers respecting political and territorial questions.

As respects questions of a political and territorial nature in Outer

¹ Printed in this Supplement, p. 246.

Mongolia, the Chinese Government engages to conform to Article II of the Notes exchanged between China and Russia on the 5th day of the 11th month of the 2nd year of the Republic of China (23rd October, 1913).

ARTICLE IV.

The title "Bogdo Cheptsun Damba Kut'ukt'u Kahn of Outer Mongolia" is conferred by the President of the Republic of China. The calendar of the Republic as well as the Mongol calendar of cyclical signs are to be used in official documents.

ARTICLE V.

China and Russia, conformably to Article II and III of the Sino-Russian Declaration of the 5th day of the 11th month of the 2nd year of the Republic of China, 23rd October 1913, recognize the exclusive right of the Autonomous Government of Outer Mongolia to attend to all the affairs of its internal administration and to conclude with foreign Powers international treaties and agreements respecting all questions of a commercial and industrial nature concerning autonomous Mongolia.

ARTICLE VI.

Conformably to the same Article III of the Declaration, China and Russia engage not to interfere in the system of autonomous internal administration existing in Outer Mongolia.

ARTICLE VII.

The military escort of the Chinese Dignitary at Urga provided for by Article III of the above-mentioned Declaration is not to exceed two hundred men. The military escorts of his assistants at Uliassutai, at Kobdo and at Mongolian-Kiachta are not to exceed fifty men each. If, by agreement with the Autonomous Government of Outer Mongolia, assistants of the Chinese Dignitary are appointed in other localities of Outer Mongolia, their military escorts are not to exceed fifty men each.

ARTICLE IX.

On all ceremonial or official occasions the first place of honor is due to the Chinese Dignitary. He has the right, if necessary, to present himself in private audience with His Holiness Bogdo Cheptsun Damba Kut'uhkt'u Kahn of Outer Mongolia. The Imperial representative of Russia enjoys the same right of private audience.

ARTICLE X.

The Chinese Dignitary at Urga and his assistants in the different localities of Outer Mongolia provided for by Article VII of this agreement are to exercise general control lest the acts of the Autonomous Government of Outer Mongolia and its subordinate authorities may impair the suzerain rights and the interests of China and her subjects in Autonomous Mongolia.

ARTICLE XI.

Conformably to Article IV of the Notes exchanged between China and Russia on the 5th day of the 11th month of the 2nd year of the Republic of China (23rd October, 1913), the territory of Autonomous Outer Mongolia comprises the regions which were under the jurisdiction of the Chinese Amban at Urga, of the Tartar-General at Uliassutai and of the Chinese Amban at Kobdo; and connects with the boundary of China by the limits of the banners of the four aimaks of Khalka and of the district of Kobdo, bounded by the district of Houlon-Bouire on the east, by Inner Mongolia on the south, by the Province of Singkiang on the South-West, and by the districts of Altai on the west.

The formal delimitation between China and Autonomous Mongolia is to be carried out by a special commission of delegates of China, Russia, and Autonomous Outer Mongolia, which shall set itself to the work of delimitation within a period of two years from the date of signature of the present agreement.

ARTICLE XII.

It is understood that customs duties are not to be established for goods of whatever origin they may be, imported by Chinese merchants into Autonomous Outer Mongolia. Nevertheless, Chinese merchants shall pay all the taxes on internal trade which have been established in Autonomous Outer Mongolia and which may be established therein in the future, payable by the Mongols of autonomous Outer Mongolia. Similarly the merchants of Autonomous Outer Mongolia, when importing any kind of goods of local production into Inner China, shall pay all the taxes on trade which have been established in Inner China and which may be established therein in the future, payable by Chinese merchants.

Goods of foreign origin imported from Autonomous Outer Mongolia into Inner China shall be subject to the customs duties stipulated in the regulations for land trade of the 7th year of the Reign of Kouang-Hsu (of 1881).

ARTICLE XIII.

Civil and criminal actions arising between Chinese subjects residing in Autonomous Outer Mongolia are to be examined and adjudicated by the Chinese Dignitary at Urga and by his assistants in the other localities of Autonomous Outer Mongolia.

ARTICLE XIV.

Civil and criminal actions arising between Mongols of Autonomous Outer Mongolia and Chinese subjects residing therein are to be examined and adjudicated conjointly by the Chinese Dignitary at Urga and his assistants in the other localities of Autonomous Outer Mongolia, or their delegates, and the Mongolian authorities. If the defendant or the accused is a Chinese subject and the claimant or the complainant is a Mongol of Autonomous Outer Mongolia, the joint examination and decision of the case are to be held at the Chinese Dignitary's place at Urga and at that of his assistants in the other localities of Autonomous Outer Mongolia; if the defendant or the accused is a Mongol of Autonomous Outer Mongolia and the claimant or the complainant is a Chinese subject, the case is to be examined and decided in the same manner in the Mongolian yamen. The guilty are to be punished according to their own laws. The interested parties are free to arrange their disputes amicably by means of arbiters chosen by themselves.

ARTICLE XV.

Civil and criminal actions arising between Mongols of Autonomous Outer Mongolia and Russian subjects residing therein are to be examined and decided conformably to the stipulations of Article XVI of the Russo-Mongolian Commercial Protocol of 21st October, 1912.¹

ARTICLE XVI

All civil and criminal actions arising between Chinese and Russian subjects in Autonomous Outer Mongolia are to be examined and de-

¹ Printed in this Supplement, p. 241.

cided in the following manner; in an action wherein the claimant or the complainant is a Russian subject and the defendant or accused is a Chinese subject, the Russian Consul personally or through his delegate participates in the judicial trial, enjoying the same rights as the Chinese Dignitary at Urga or his delegate or his assistants in the other localities of Autonomous Outer Mongolia. The Russian Consul or his delegate proceeds to the hearing of the claimant and the Russian witnesses in the court in session, and interrogates the defendant and the Chinese witnesses through the medium of the Chinese Dignitary at Urga or his delegate or of his assistants in the other localities of Autonomous Outer Mongolia; the Russian Consul or his delegate examines the evidence presented, demands security for "revindications" and has recourse to the opinion of experts, if he considers such expert opinion necessary for the elucidation of the rights of the parties, etc.; he takes part in deciding and in the drafting of the judgment, which he signs with the Chinese Dignitary at Urga or his delegate or his assistants in the other localities of Autonomous Outer Mongolia. The execution of the judgment constitutes a duty of the Chinese authorities.

The Chinese Dignitary at Urga and his assistants in the other localities of Autonomous Outer Mongolia may likewise personally or through their delegates be present at the hearing of an action in the consulates of Russia wherein the defendant or the accused is a Russian subject and the claimant or the complainant is a Chinese subject. The execution of the judgment constitutes a duty of the Russian authorities.

ARTICLE XVII.

Since a section of the Kiachta-Urga-Kalgan telegraph line lies in the territory of Autonomous Outer Mongolia, it is agreed that the said section of the said telegraph line constitutes the complete property of the Autonomous Government of Outer Mongolia.

The details respecting the establishment on the borders of that country and Inner Mongolia of a station to be administered by Chinese and Mongolian employees for the transmission of telegrams, as well as the questions of the tariff for telegrams transmitted and of the apportionment of the receipts, etc., are to be examined and settled by a special commission of technical delegates of China, Russia and Autonomous Outer Mongolia.

ARTICLE XVIII.

The Chinese postal institutions at Urga and Mongolian-Kiachta remain in force on the old basis.

ARTICLE XIX.

The Autonomous Government of Outer Mongolia will place at the disposal of the Chinese Dignitary of Urga and of his assistants at Uliassutai, Kobdo and Mongolian-Kiachta, as well as of their staff, the necessary houses, which are to constitute the complete property of the Government of the Republic of China. Similarly necessary grounds in the vicinity of the residence of the said staff are to be granted for their escorts.

ARTICLE XX.

The Chinese Dignitary at Urga and his assistants in the other localities of Autonomous Outer Mongolia and also their staffs are to enjoy the right to use the courier stations of the Autonomous Mongolian Government conformably to the stipulation of Article XI of the Russo-Mongolian Protocol of 21 October, 1912.

ARTICLE XXI.

The stipulations of the Sino-Russian Declaration and the Notes exchanged between China and Russia of the 5th day of the 11th month of the 2nd year of the Republic of China (23 October, 1913), as well as those of the Russo-Mongolian Commercial Protocol of the 21 October, 1912, remain in full force.

ARTICLE XXII.

The present agreement drawn up in triplicate in Chinese, Russian, Mongolian and French, comes into force from the day of its signature. Of the four texts which have been duly compared and found to agree the French text shall be authoritative in the interpretation of the present agreement.

Done at Kiachta the 7th day of the sixth month of the fourth year of the Republic of China, corresponding to the twenty-fifth of May (seventh of June), one thousand nine hundred fifteen. DECLARATIONS MADE BY RUSSIA AND CHINA UPON SIGNING THE TRIPAR-TITE AGREEMENT BETWEEN CHINA, RUSSIA AND MONGOLIA OF JUNE 7/ MAY 25, 1915.

KIACHTA,
$$\frac{May 25}{June 7}$$
, 1915.

The undersigned Imperial Delegate Plenipotentiary of Russia to the tripartite negotiations at Kiachta, duly authorized for this purpose, has the honor, on proceeding to sign the tripartite agreement of this day's date relating to Autonomous Outer Mongolia, to declare in the name of his government to their excellencies Messieurs Py Koue Fang and Tcheng Loh, Delegates Plenipotentiary of the Republic of China to the tripartite negotiations at Kiachta, as follows:

It is agreed that all the telegraph offices which are situated along that section of the Kalgan-Urga-Kiachta line which lies within Outer Mongolia and of which mention is made in Article XVII of the agreement of Kiachta, are to be handed over by the Chinese officials to the Mongolian officials within a period at most of six months after the signing of the agreement; and that the point of junction of the Chinese and Mongolian lines is to be fixed by the technical commission provided for in the aforesaid article.

The above is at the same time brought to the knowledge of the Delegates Plenipotentiary of the Autonomous Government of Outer Mongolia.

The undersigned seizes this occasion to renew to the Delegates Plenipotentiary of the Republic of China the assurances of his very high consideration.

(Signed) A. MILLER.

To MM. General Py Koue Fang and Tcheng Loh,

Chinese Delegates Plenipotentiary.

KIACHTA,
$$\frac{May 25}{June 7}$$
, 1913.

The undersigned, Delegate Plenipotentiary of Russia to the tripartite negotiations at Kiachta, has the honor to acknowledge to their excellencies Messieurs Pu Koue Fang and Tcheng Loh, Delegates Plenipotentiary of the Republic of China to the tripartite negotiations at Kiachta, the receipt of the following note of to-day's date:

"The undersigned Delegates Plenipotentiary of the Republic of China to the tripartite negotiations at Kiachta, duly authorized for this purpose, have the honor, on proceeding to sign the tripartite agreement of this day's date relating to Autonomous Outer Mongolia, to declare in the name of their government to his excellency, Mr. Miller, Imperial Delegate Plenipotentiary of Russia to the tripartite negotiations at Kiachta as follows: From the day of signature of the present Sino-Russo-Mongolian agreement the Government of the Republic of China grants a full amnesty to all the Mongols who submitted to the Autonomous Government of Outer Mongolia; it leaves to all the Mongols of Outer Mongolia as of Inner Mongolia the freedom as before of residence and travel in the said regions. The Government of the Republic of China will not place any restraint upon Mongols going in pilgrimage to testify their veneration to His Holiness Bogdo Cheptsun Damba Hut'ukht'u Khan of Outer Mongolia."

The undersigned seizes this occasion to renew to the Delegates Plenipotentiary of the Republic of China the assurances of his very high consideration.

(Signed) A. MILLER.

To MM. General Py Koue Fang and Tcheng Loh, Chinese Delegates Plenipotentiary.

CONVENTION BETWEEN NICARAGUA AND THE UNITED STATES REGARDING THE NICARAGUAN CANAL ROUTE AND A NAVAL BASE ON THE GULF OF FONSECA $^{\mathrm{I}}$

Signed at Washington, August 5, 1914; ratifications exchanged, June 22, 1916

The Government of the United States of America and the Government of Nicaragua being animated by the desire to strengthen their ancient and cordial friendship by the most sincere coöperation for all purposes of their mutual advantage and interest and to provide for the possible future construction of an inter-oceanic ship canal by way of the San Juan River and the great Lake of Nicaragua, or by any route over Nicaraguan territory, whenever the construction of such canal shall be deemed by the Government of the United States conducive to the in-

¹ U. S. Treaty Series, No. 624.

terests of both countries, and the Government of Nicaragua wishing to facilitate in every way possible the successful maintenance and operation of the Panama Canal, the two governments have resolved to conclude a convention to these ends, and have accordingly appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Nicaragua, Señor General Don Emiliano Chamorro, Envoy Extraordinary and Minister Plenipotentiary of Nicaragua to the United States;

Who, having exhibited to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive proprietary rights necessary and convenient for the construction, operation and maintenance of an interoceanic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory, the details of the terms upon which such canal shall be constructed, operated and maintained to be agreed to by the two governments whenever the Government of the United States shall notify the Government of Nicaragua of its desire or intention to construct such canal.

ARTICLE II

To enable the Government of the United States to protect the Panama Canal and the proprietary rights granted to the Government of the United States by the foregoing article, and also to enable the Government of the United States to take any measure necessary to the ends contemplated herein, the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States the islands in the Caribbean Sea known as Great Corn Island and Little Corn Island; and the Government of Nicaragua further grants to the Government of the United States for a like period of ninety-nine years the right to establish, operate and maintain a naval base at such place on the territory of Nicaragua bordering upon the Gulf of Fonseca as the

Government of the United States may select. The Government of the United States shall have the option of renewing for a further term of ninety-nine years the above leases and grants upon the expiration of their respective terms, it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof.

ARTICLE III

In consideration of the foregoing stipulations and for the purposes contemplated by this convention and for the purpose of reducing the present indebtedness of Nicaragua, the Government of the United States shall, upon the date of the exchange of ratification of this convention, pay for the benefit of the Republic of Nicaragua the sum of three million dollars United States gold coin, of the present weight and fineness, to be deposited to the order of the Government of Nicaragua in such bank or banks or with such banking corporation as the Government of the United States may determine, to be applied by Nicaragua upon its indebtedness or other public purposes for the advancement of the welfare of Nicaragua in a manner to be determined by the two high contracting parties, all such disbursements to be made by orders drawn by the Minister of Finance of the Republic of Nicaragua and approved by the Secretary of State of the United States or by such person as he may designate.

ARTICLE IV

This convention shall be ratified by the high contracting parties in accordance with their respective laws, and the ratifications thereof shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington, in duplicate, in the English and Spanish languages, on the 5th day of August, in the year nineteen hundred and fourteen.

WILLIAM JENNINGS BRYAN. [SEAL.] EMILIANO CHAMORRO. [SEAL.] PROTOCOL BETWEEN PANAMA AND THE UNITED STATES FOR THE DETERMINATION OF AMOUNT OF DAMAGES CAUSED BY THE RIOT AT PANAMA CITY JULY 4, $1912\ ^{1}$

Signed at Panama, November 27, 1915

The Government of the United States of America and the Government of the Republic of Panama, through their respective Plenipotentiaries, His Excellency, William Jennings Price, Envoy Extraordinary and Minister Plenipotentiary to Panama, on the part of the United States, and His Excellency, Ernesto T. Lefevre, Secretary of Foreign Affairs, on the part of the Republic of Panama, being duly authorized thereto, have agreed upon and concluded the following protocol:

WHEREAS, the Government of the United States claims indemnities for the death and injury of American citizens in a riot which occurred in Cocoa Grove, Panama City, July 4, 1912, and

WHEREAS, the Government of Panama has agreed, in principle, to the payment of such indemnities irrespective of the circumstances affecting the riot; and

WHEREAS, the two governments have been unable to agree upon the amounts of such indemnities, and have concluded to submit to arbitration the determination of the amounts to be paid by the Republic of Panama, it is, therefore, agreed as follows:

ARTICLE I

The high contracting parties agree to submit to His Excellency W. L. F. C. van Rappard, Envoy Extraordinary and Minister Plenipotentiary accredited by the Government of the Netherlands to the Governments of the United States and Panama, the determination of the amount of damages to be paid for each one of the American citizens killed and for each one injured as a result of the riot, and agree that he shall award the amounts so determined against the Government of Panama.

ARTICLE II

His Excellency W. L. F. C. van Rappard shall determine the amounts of such damages upon such papers as may be presented to him by the

¹ U. S. Treaty Series, No. 620.

Secretary of State of the United States and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama at Washington, respectively, within five months from the date of the signing of this agreement, but it is expressly understood and agreed that such papers shall relate only to the amount of damages to be paid.

The case shall then be closed unless His Excellency shall call for further documents, evidence, correspondence, or arguments from either government, in which event, such further documents, evidence, correspondence or arguments shall be furnished within sixty days from the date of the call. If such documents, evidence, correspondence or arguments are not furnished within the time specified a decision in the case shall be given as if they did not exist.

The entire case of each government shall be presented in writing.

ARTICLE III

A reasonable honorarium to His Excellency W. L. F. C. van Rappard shall be paid by the Government of Panama.

ARTICLE IV

The decision of His Excellency W. L. F. C. van Rappard shall be accepted as final and shall be binding upon the two governments.

In Witness Whereof, the undersigned have hereunto signed their names and affixed their seals.

Done at Panama the 27th day of November 1915.

Wm. Jennings Price [seal.] E. T. Lefevre. [seal.] TREATY BETWEEN BOLIVIA AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, January 22, 1914; ratifications exchanged, January 8, 1915

The United States of America and the Republic of Bolivia, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Bolivia, Señor Don Ignacio Calderon, Envoy Extraordinary and Minister Plenipotentiary of Bolivia to the United States;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country. Each of the high con-

¹ U. S. Treaty Series, No. 606.

tracting parties shall have the right to remove, at any time before investigation begins, any commissioner selected by it and to name his successor, and under the same conditions shall also have the right to withdraw its approval of the fifth commissioner selected jointly; in which case a new commissioner shall be selected jointly as in the original selection. The commissioners shall, when actually employed in the investigation of a dispute, receive such compensation as shall be agreed upon by the high contracting parties. The expenses of the commission shall be paid by the two Governments in equal proportion.

The international commission shall be appointed as soon as possible after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, by unanimous agreement spontaneously offer its services to that effect, and in such case it shall notify both governments and request their coöperation in the investigation.

The high contracting parties agree to furnish the permanent international commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Bolivia, with the approval of the Congress thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and

shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the 22d day of January, in the year of our Lord nineteen hundred and fourteen.

WILLIAM JENNINGS BRYAN. [SEAL.]
IGNACIO CALDERON. [SEAL.]

TREATY BETWEEN CHILE AND THE UNITED STATES FOR THE ADVANCE-MENT OF PEACE 1

Signed at Washington, July 24, 1914; ratifications exchanged, January 19, 1916

The President of the United States of America and the President of the Republic of Chile being desirous to secure in the most effective way the amicable settlement of any future difficulties between both countries and the subsequent maintenance of peace and good amity between them, have resolved to enter into a special treaty for that purpose, and to that end have appointed their plenipotentiaries as follows:

The President of the United States of America, His Excellency William Jennings Bryan, Secretary of State of the United States; and

The President of the Republic of Chile, His Excellency Eduardo Suárez Mujica, Envoy Extraordinary and Minister Plenipotentiary of Chile to the United States of America;

Who, after having communicated to each other their respective full powers, found to be in proper and due form, have agreed upon and concluded the following articles:

ARTICLE I

The high contracting parties agree that all disputes that may arise in the future between them, shall, when diplomatic methods of adjustment have failed, be submitted for investigation and report to an international commission to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation, nor before all resources stipulated in this treaty have proved unsuccessful.

¹ U. S. Treaty Series, No. 621.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows:—each government shall designate two members, only one of whom shall be of its own nationality. The fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not belong to any of the nationalities already represented on the commission. The fifth member shall perform the duties of president.

Each of the high contracting parties shall have the right to remove, at any time before investigation begins, any commissioner selected by it and, conjointly, the nomination of the successor, or successors, must be enacted. Likewise, either government shall also have the right to withdraw its approval of the fifth member; in which case the new fifth member will be appointed within thirty days following the notification of the withdrawal, by common agreement between the two governments, and such agreement lacking, the appointment will be made by the President of the Swiss Confederation.

The vacancies that may occur through other causes than those already named, will be filled as mentioned in this article.

The international commission shall be constituted within the four months following the exchange of the ratifications of this treaty, and shall notify both governments of the date of its organization. The commission will establish its own regulations. The resolutions of the commission, as well as its final report, will be adopted by the majority of its members.

The expenses of the commission shall be paid by the two contracting governments in equal proportion.

The commission shall determine the country wherein it will sit, taking into consideration the greater facilities for the investigation.

ARTICLE III

In case that, as established in Article I, the high contracting parties shall have failed to adjust the difficulty by diplomatic methods, said difficulty will be immediately submitted to the international commission for its investigation and report. The convocation of said commission may be made by either contracting government.

The high contracting parties agree to furnish the permanent interna-

tional commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate: one copy shall be presented to each government and the third retained by the commission for its files.

ARTICLE IV

Once the report is in possession of both governments, six months' time will be available for renewed negotiation in order to bring about a settlement of the difficulty in view of the findings of said report; and if even during this new term both governments should be unable to reach a friendly arrangement, the dispute will then be submitted to the Permanent Court of Arbitration established at The Hague.

Notwithstanding, any question that may affect the independence, the honor or the vital interests of either or both of the countries, or the provisions of their respective constitutions, or the interests of a third nation, will not be submitted to such or any other arbitration.

A special and previously agreed convention will detail, if arbitration is resorted to, the matter of the controversy, the extent of the arbiters' powers, and the length of time to which the court of arbitration must subject its organization and procedure, including the presentation of memorials, proofs, and pleas.

ARTICLE V

The present treaty will be ratified by both governments after obtaining its approval by the Constitutional powers of both countries, and the ratifications shall be exchanged in Washington as soon as possible.

The special convention prescribed by the final paragraph of Article IV remains also subject to the constitutional requisites of both countries.

The present treaty shall take effect immediately after the exchange of the ratifications; and shall continue in force for a period of five years, and it shall thereafter remain in force, during successive periods of five years, until one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness thereof the respective plenipotentiaries have signed the present treaty, and have affixed thereunto their seals.

Done in Washington, on the 24th day of July, in the year nineteen hundred and fourteen.

William Jennings Bryan. [seal.] Ed. Suárez Mujíca. [seal.]

TREATY BETWEEN CHINA AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, September 15, 1914; ratifications exchanged, October 22, 1915.

The President of the United States of America and the President of the Republic of China, desiring to strengthen the friendly relations which unite their two countries and to serve the cause of general peace, have decided to conclude a treaty for these purposes and have consequently appointed the plenipotentiaries designated hereinafter, to wit:

The President of the United States of America, the Honorable William Jennings Bryan, Secretary of State of the United States; and

The President of the Republic of China, Kai Fu Shah, Envoy Extraordinary and Minister Plenipotentiary of the Republic of China to the United States:

Who, after exhibiting to each other their full powers, found to be in due and proper form, have agreed upon the following articles:

ARTICLE I.

Any disputes arising between the Government of the United States of America and the Government of the Republic of China, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the high contracting parties do not have recourse to arbitration, be submitted for investigation and report to a permanent international commission constituted in the manner prescribed in the following article.

The high contracting parties agree not to resort, with respect to each other, to any act of force during the investigation to be made by the commission and before its report is handed in.

ARTICLE II.

The international commission shall be composed of five members appointed as follows: each government shall designate two members,

1 U. S. Treaty Series, No. 619.

only one of whom shall be of its own nationality; the fifth member shall be designated by common consent and shall not belong to any of the nationalities already represented on the commission; he shall perform the duties of president.

In case the two governments should be unable to agree on the choice of the fifth commissioner, the other four shall be called upon to designate him, and failing an understanding between them, the provisions of Article 45 of the Hague Convention of 1907 shall be applied.

The commission shall be organized within six months from the exchange of ratifications of the present convention.²

The members shall be appointed for one year and their appointment may be renewed. They shall remain in office until superseded or reappointed, or until the work on which they are engaged at the time their office expires is completed.

Any vacancies which may arise (from death, resignation, or cases of physical or moral incapacity) shall be filled within the shortest possible period in the manner followed for the original appointment.

The high contracting parties shall, before designating the commissioners, reach an understanding in regard to their compensation. They shall bear by halves the expenses incident to the meeting of the Commission.

ARTICLE III.

In case a dispute should arise between the high contracting parties which is not settled by the ordinary methods, each party shall have a right to ask that the investigation thereof be intrusted to the international commission charged with making a report. Notice shall be given to the President of the international commission, who shall at once communicate with his colleagues.

In the same case the president may, after consulting his colleagues and upon receiving the consent of a majority of the members of the commission, offer the services of the latter to each of the contracting parties. Acceptance of that offer declared by one of the two governments shall be sufficient to give jurisdiction of the case to the commission in accordance with the foregoing paragraph.

The place of meeting shall be determined by the commission itself.

² The time within which the organization of the commission may be completed was extended by an exchange of notes of May 11-19, 1916, from April 22, 1916, to August 1, 1916. (Treaty series, No. 619-A.)

ARTICLE IV.

The two high contracting parties shall have a right, each on its own part, to state to the president of the commission what is the subject matter of the controversy. No difference in these statements, which shall be furnished by way of suggestion, shall arrest the action of the commission.

In case the cause of the dispute should consist of certain acts already committed or about to be committed, the commission shall as soon as possible indicate what measures to preserve the rights of each party ought in its opinion to be taken provisionally and pending the delivery of its report.

ARTICLE V.

As regards the procedure which it is to follow, the commission shall as far as possible be guided by the provisions contained in Articles 9 to 36 of Convention 1 of The Hague of 1907.

The high contracting parties agree to afford the commission all means and all necessary facilities for its investigation and report.

The work of the commission shall be completed within one year from the date on which it has taken jurisdiction of the case, unless the high contracting parties should agree to set a different period.

The conclusion of the commission and the terms of its report shall be adopted by a majority. The report, signed only by the president acting by virtue of his office, shall be transmitted by him to each of the contracting parties.

The high contracting parties reserve full liberty as to the action to be taken on the report of the commission.

ARTICLE VI.

The present treaty shall be ratified by the President of the United States of America, with the advice and consent of the Senate of the United States, and by the President of the Republic of China.

It shall go into force immediately after the exchange of ratifications and shall last five years.

Unless denounced six months at least before the expiration of the said period of five years, it shall remain in force until the expiration of a period of twelve months after either party shall have notified the other of its intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington this 15th day of September, in the year nineteen hundred and fourteen, corresponding to the 15th day of the ninth month in the third year of the Republic of China.

[Seal.] WILLIAM JENNINGS BRYAN. [Signature and seal of Chinese Plenipotentiary.] [KAI FU SHAH].

TREATY BETWEEN COSTA RICA AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

[Chinese text not printed.]

Signed at Washington, February 13, 1914; ratifications exchanged, November 12, 1914.

The United States of America and the Republic of Costa Rica, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Costa Rica, Señor Don Joaquin Bernardo Calvo, Envoy Extraordinary and Minister Plenipotentiary of Costa Rica to the United States;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

¹ U. S. Treaty Series, No. 603.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country. Each of the high contracting parties shall have the right to remove, at any time before investigation begins, any commissioner selected by it and to name his successor, and under the same conditions shall also have the right to withdraw its approval of the fifth commissioner selected jointly; in which case a new commissioner shall be selected jointly as in the original selection. The commissioners shall, when actually employed in the investigation of a dispute, receive such compensation as shall be agreed upon by the high contracting parties. The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed as soon as possible after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the International commission for investigation and report. The international commission may, however, spontaneously offer its services to that effect, and in such case it shall notify both governments and request their coöperation in the investigation.

The high contracting parties agree to furnish the permanent international commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently

on the subject matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Costa Rica, with the approval of the Congress thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof, the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the 13th day of February, in the year of our Lord nineteen hundred and fourteen.

[Seal.] WILLIAM JENNINGS BRYAN. [Seal.] J. B. Calvo.

TREATY BETWEEN DENMARK AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, April 17, 1914; ratifications exchanged, January 19, 1915

The United States of America and His Majesty the King of Denmark being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose and to that end have appointed as their plenipotentiaries:

The President of the United States; The Honorable William Jennings Bryan, Secretary of State; and

His Majesty the King of Denmark; Mr. Constantin Brun, His Chamberlain and Envoy Extraordinary and Minister Plenipotentiary to the United States;

Who, after having communicated to each other their respective full

¹ U. S. Treaty Series, No. 608.

powers, found to be in proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and report.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments. It is understood that the fifth member of the commission shall not be a citizen of either country. The expenses of the commission shall be paid by the two Governments in equal proportion.

The international commission shall be appointed within four months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

Unless otherwise agreed between the parties the procedure of the international commission shall be regulated by the prescriptions contained in the convention signed at The Hague on October 18, 1907, for the peaceful settlement of international disputes, Chapter III.

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, act upon its own initiative, and in such case it shall notify both governments and request their coöperation in the investigation.

The high contracting parties agree to furnish the permanent international commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

ARTICLE IV

The high contracting parties agree that, upon the receipt of the report of the international commission as provided in Article III, they will immediately endeavor to adjust the dispute directly between them upon the basis of the commission's findings. The high contracting parties, however, reserve the right to act independently on the subject matter of the dispute after the report of the commission shall have been submitted.

ARTICLE V

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Denmark.

The ratifications shall be exchanged at Washington as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties shall have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in duplicate in the English and Danish languages at Washington this 17th day of April, in the year 1914.

[Seal]. WILLIAM JENNINGS BRYAN. [Seal]. C. Brun.

TREATY BETWEEN ECUADOR AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, October 13, 1914; ratifications exchanged January 22, 1916.

The Governments of the United States of America and of the Republic of Ecuador, being desirous of once more contributing to the consolidation of their traditional policy of peace and amity and also

¹ U. S. Treaty Series, No. 622.

to advance the diffusion of the spirit of universal peace, have resolved to enter into a special treaty and to that end have appointed as their plenipotentiaries

The President of the United States of America; The Honorable William Jennings Bryan, Secretary of State; and

The President of the Republic of Ecuador: Señor Dr. Don Gonzalo S. Córdova, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Ecuador to the United States of America.

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, and which it has not been possible to adjust through diplomatic methods, be referred for investigation and report to an international commission to be constituted in the manner prescribed in the following article. And they further agree not to declare war or commit any act of hostility against each other during such investigation and before the report is submitted.

ARTICLE II

The international commission mentioned in the preceding article shall be composed of five members, to be appointed as follows: each government shall appoint two members, one of whom shall be a citizen of the country whose government appoints him, and the other a citizen of some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either of the two contracting countries. In case of disagreement regarding the appointment of the fifth member, the two governments shall request the President of the Swiss Confederation to choose such member. Said fifth member shall be of right the president of the international commission.

Each government shall have the right to revoke the appointment of either or both of the members chosen by it, at any time before the investigation is begun, but must appoint his or their successors at the time his or their appointments are revoked. If the fifth member be chosen by common agreement between the high contracting parties,

they may also at any time before the investigation is begun, withdraw their approval, but shall in such case come to an agreement within the next thirty days as to the appointment of a successor or request the President of the Swiss Confederation to make such appointment. Vacancies due to other causes than those enumerated in this article shall be filled in the manner established for the original appointment, and the new appointments shall not be delayed more than fifteen days from the date on which notice of the vacancy was received. The international commission shall organize within six months after the exchange of the ratifications of this treaty, and shall report its organization to both governments on the same date. It shall prescribe the rules of practice to be observed in the discharge of its mission, and shall also designate the place where the investigations are to be conducted. The expenses of the commission and the compensation of its members shall be paid by the two contracting governments in equal proportion.

ARTICLE III

In case the high contracting parties shall have failed to adjust their disputes by diplomatic methods, they shall at once be referred to the international commission for investigation and report, and either of the two interested governments may make the respective reference. The high contracting parties agree to furnish the international commission with all the facilities which it requires for the proper discharge of its trust, and it shall complete its investigation and submit its report within a period of one year from the date on which it shall declare its investigation to have begun. If for reasons of force majeure it shall not have found it possible to complete its investigation or submit its report within the said period, it may be extended for six months more, if the high contracting parties agree in this respect. Upon the submission of its report by the International Commission, or if for any reason whatsoever no report is submitted within the term fixed in this article, the high contracting parties reserve the right to act in the subject matter of the investigation and report as their respective interests may demand.

ARTICLE IV

The present treaty shall be ratified by the respective governments in accordance with the provisions of their respective constitutions, and the ratifications shall be exchanged as soon as possible. This treaty shall continue in force for five years from the date of the exchange of ratifications and if notice of an intention to terminate it is not given by one of the contracting parties to the other one year before the termination of this period, it shall be considered as renewed for another year, and so on successively. A strict and faithful observance of the preceding article is entrusted to the honor of the signatory nations.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the 13th day of October, in the year of our Lord nineteen hundred and fourteen.

[SEAL.] WILLIAM JENNINGS BRYAN.

[SEAL.] G. S. CORDOVA.

TREATY BETWEEN FRANCE AND THE UNITED STATES FOR THE . ADVANCEMENT OF PEACE¹

Signed at Washington, September 15, 1914; ratifications exchanged January 22, 1915.

The President of the United States of America and the President of the French Republic, desiring to strengthen the friendly relations which unite their two countries and to serve the cause of general peace, have decided to conclude and have consequently appointed the plenipotentiaries designated hereinafter, to-wit:

The President of the United States of America, the Honorable William Jennings Bryan, Secretary of State of the United States; and

The President of the French Republic, His Excellency J. J. Jusserand, Ambassador of the French Republic to the United States;

Who, after exhibiting to each other their full powers, found to be in due and proper form, have agreed upon the following articles:

ARTICLE 1

Any disputes arising between the Government of the United States of America and the Government of the French Republic, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the high contracting parties do not have recourse to arbitration, be submitted for investigation and report to a permanent inter-

¹ U. S. Treaty Series, No. 609.

national commission constituted in the manner prescribed in the following article.

The high contracting parties agree not to resort, with respect to each other, to any act of force during the investigation to be made by the commission and before its report is handed in.

ARTICLE 2

The international commission shall be composed of five members appointed as follows: each government shall designate two members, only one of whom shall be of its own nationality; the fifth member shall be designated by common consent and shall not belong to any of the nationalities already represented on the commission; he shall perform the duties of president.

In case the two governments should be unable to agree on the choice of the fifth commissioner, the other four shall be called upon to designate him, and failing an understanding between them, the provisions of Article 45 of The Hague Convention of 1907 shall be applied.

The commission shall be organized within six months from the exchange of ratifications of the present convention.²

The members shall be appointed for one year and their appointment may be renewed. They shall remain in office until superseded or reappointed, or until the work on which they are engaged at the time their office expires is completed.

Any vacancies which may arise (from death, resignation, or cases of physical or moral incapacity) shall be filled within the shortest possible period in the manner followed for the original appointment.

The high contracting parties shall, before designating the commissioners, reach an understanding in regard to their compensation. They shall bear by halves the expenses incident to the meeting of the commission.

ARTICLE 3

In case a dispute should arise between the high contracting parties which is not settled by the ordinary methods, each party shall have a right to ask that the investigation thereof be intrusted to the interna-

² The time within which the organization of the commission may be completed was extended by an exchange of notes of November 10, 1915, from July 22, 1915, to January 1, 1916. (Treaty Series, No. 609.)

tional commission charged with making a report. Notice shall be given to the president of the international commission, who shall at once communicate with his colleagues.

In the same case the president may, after consulting his colleagues and upon receiving the consent of a majority of the members of the commission, offer the services of the latter to each of the contracting parties. Acceptance of that offer declared by one of the two governments shall be sufficient to give jurisdiction of the case to the commission in accordance with the foregoing paragraph.

The place of meeting shall be determined by the commission itself.

ARTICLE 4

The two high contracting parties shall have a right, each on its own part, to state to the president of the commission what is the subject-matter of the controversy. No difference in these statements, which shall be furnished by way of suggestion, shall arrest the action of the commission.

In case the cause of the dispute should consist of certain acts already committed or about to be committed, the commission shall as soon as possible indicate what measures to preserve the rights of each party ought in its opinion to be taken provisionally and pending the delivery of its report.

ARTICLE 5

As regards the procedure which it is to follow, the commission shall as far as possible be guided by the provisions contained in Articles 9 to 36 of Convention 1 of The Hague of 1907.

The high contracting parties agree to afford the commission all means and all necessary facilities for its investigation and report.

The work of the commission shall be completed within one year from the date on which it has taken jurisdiction of the case, unless the high contracting parties should agree to set a different period.

The conclusion of the commission and the terms of its report shall be adopted by a majority. The report, signed only by the president acting by virtue of his office, shall be transmitted by him to each of the contracting parties.

The high contracting parties reserve full liberty as to the action to be taken on the report of the commission.

The present treaty shall be ratified by the President of the United States of America, with the advice and consent of the Senate of the United States, and by the President of the French Republic, in accordance with the constitutional laws of France.

It shall go into force immediately after the exchange of ratifications and shall last five years.

Unless denounced six months at least before the expiration of the said period of five years, it shall remain in force until the expiration of a period of twelve months after either party shall have notified the other of its intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington this 15th day of September, in the year nineteen hundred and fourteen.

[SEAL.] WILLIAM JENNINGS BRYAN. [SEAL.] JUSSERAND.

TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE ${f ADVANCEMENT}$ OF PEACE ${f I}$

Signed at Washington, September 15, 1914; ratifications exchanged November 10, 1914.

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable Sir Cecil Arthur Spring-Rice, G. C. V. O., K. C. M. G., etc., His Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to each other their respective full

¹ U. S. Treaty Series, No. 602.

powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, other than disputes the settlement of which is provided for and in fact achieved under existing agreements between the high contracting parties, shall, when diplomatic methods of adjustments have failed, be referred for investigation and report to a permanent international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country. The expenses of the commission shall be paid by the two governments in equal proportions.

The international commission shall be appointed within six months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.²

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, spontaneously by unanimous agreement offer its services to that effect, and in such case it shall notify both governments and request their coöperation in the investigation.

In the event of its appearing to His Majesty's Government that the British interests affected by the dispute to be investigated are

² The time within which the organization of the commission may be completed was extended by an exchange of notes of November 3, 1915, from May 10, 1915, to January 1, 1916. (Treaty Series, No. 602-A.)

not mainly those of the United Kingdom but are mainly those of some one or more of the self-governing dominions, namely the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland, His Majesty's Government shall be at liberty to substitute as the member chosen by them to serve on the international commission for such investigation and report another person selected from a list of persons to be named one for each of the self-governing dominions but only one shall act, namely, that one who represents the dominion immediately interested.

The high contracting parties agree to furnish the permanent international commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

This treaty shall not affect in any way the provisions of the treaty of the 11th January, 1909, relating to questions arising between the United States and the Dominion of Canada.

ARTICLE V

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in duplicate at Washington on the 15th day of September, in the year of our Lord nineteen hundred and fourteen.

[SEAL.] WILLIAM JENNINGS BRYAN.

... [SEAL.] CECIL SPRING RICE.

TREA'TY BETWEEN GUATEMALA AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE¹

Signed at Washington, September 20, 1913; ratifications exchanged, October 13, 1914

The United States of America and the Republic of Guatemala, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Guatemala, Señor Don Joaquin Méndez, Envoy Extraordinary and Minister Plenipotentiary of Guatemala to the United States;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an international commission, to be constituted in the manner prescribed in the next succeeding Article; and they agree not to declare war or begin hostilities during such investigation and report.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be

¹ U. S. Treaty Series, No. 598.

chosen by common agreement between the two governments. The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed within four months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.²

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, act upon its own initiative, and in such case it shall notify both governments and request their coöperation in the investigation.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Republic of Guatemala, with the approval of the Congress thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

² The time within which the organization of the commission may be completed was extended by exchanges of notes of November 3, 1915, and June 1, 1916, from February 13, 1915, to July 1, 1916. (Treaty Series, Nos. 598-A and 598-B.)

Done in Washington on the 20th day of September, in the year of our Lord nineteen hundred and thirteen.

[Seal.] William Jennings Bryan. [Seal.] Joaquín Méndez.

TREATY BETWEEN HONDURAS AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, November 3, 1913; ratifications exchanged, July 27, 1916

The United States of America and the Republic of Honduras, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Honduras, Señor Doctor don Alberto Membreño, Envoy Extraordinary and Minister Plenipotentiary of Honduras to the United States;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and report.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by com-

¹ U. S. Treaty Series, No. 625.

mon agreement between the two governments. The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed within four months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, act upon its own initiative, and in such case it shall notify both governments and request their coöperation in the investigation.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the Congress of the Republic of Honduras; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the third day of November, in the year of our Lord nineteen hundred and thirteen.

WILLIAM JENNINGS BRYAN. [SEAL.] ALBERTO MEMBREÑO. [SEAL.] TREATY BETWEEN ITALY AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{I}}$

Signed at Washington, May 5, 1914; ratifications exchanged, March 19, 1915

The President of the United States of America and His Majesty the King of Italy, being desirous to strengthen the bonds of amity that bind the two countries, and also to advance the cause of general peace, have resolved to enter into a treaty for those purposes, and to that end have appointed as their plenipotentiaries:

The President of the United States of America, the Honorable William Jennings Bryan, Secretary of State; and

His Majesty the King of Italy, His Excellency the Marquis Cusani Confalonieri, Commander of the Order of Saint Maurice and Saint Lazarus, Grand Cordon of the Order of the Crown of Italy, etc., His Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:

ARTICLE I

The high contracting parties engage to submit for investigation and report to a commission, to be constituted according to the provisions of the following article, all differences of whatever nature they may be which may occur between them which can not be composed by diplomatic methods or are not submitted to a tribunal of arbitration; they bind themselves not to declare war nor to open hostilities during the examination by the commission and before the commission has presented its report.

ARTICLE II

The international commission shall be composed of five members appointed according to the following rules:

Each country, by means of its government, chooses two members, one from among its own subjects, the other from among those of a third state; the two governments, after agreement, will name the fifth member, on condition, however, that he be not a citizen of either of these two countries. Each commissioner shall hold his place during a term of four

¹ U. S. Treaty Series, No. 615.

years; at the expiration of this term, or in the event of vacancy, the confirmation or the substitution of the commissioner whose term may have expired or whose place may be vacant shall be made in the same manner.

Each of the high contracting parties shall have the right, before the investigation has begun, to substitute for one of the members of the commission appointed by it another one chosen from the category to which the commissioner to be replaced belonged.

When the commissioners be actually occupied in the examination of a question they shall receive a compensation which will be mutually agreed upon by the high contracting parties.

The expenses of the commission shall be borne by the two governments in equal proportion. The international commission shall be appointed within six months after the exchange of the ratifications of this treaty.²

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods or by means of a tribunal of arbitration, it shall at once be referred, either by common agreement or by one or the other party, to the international commission for investigation and report.

The commission must inform the two governments of the date on which it will begin its labors, inviting them to furnish it with all the documents and to lend it the coöperation necessary for the investigation.

The high contracting parties engage to furnish all the documents and to afford all facilities for the investigation and the report, provided that in their judgment this does not conflict with the laws or with the supreme interests of the state, and provided that the interests and rights of third states shall not thereby suffer damage.

In the absence of an agreement to the contrary between the high contracting parties, the commission will itself adopt regulations governing its procedure.

The report of the commission must be presented within a period of one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties may have shortened or prolonged by mutual agreement this term. The report shall be prepared in

² The time within which the organization of the commission may be completed was extended by an exchange of notes of September 18, 1915, from September 19, 1915 to January 1, 1916. (Treaty Series No. $615\frac{1}{2}$).

triplicate; one copy shall be presented to each government, and the third shall be placed in the archives of the commission.

The high contracting parties reserve to themselves the right to act independently on the subject-matter of the dispute after the commission shall have presented its report.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate, and by His Majesty the King of Italy, and the ratifications shall be exchanged as soon as possible.

The treaty will come into force, for a period of five years, immediately after the exchange of ratifications. It will thereafter remain in force for twelve months more after one of the high contracting parties shall have notified the other of its intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in duplicate in the English and Italian languages at Washington this fifth day of May, in the year 1914.

WILLIAM JENNINGS BRYAN. [SEAL.] CUSANI. [SEAL.]

Signed at Washington, June 24, 1914; ratifications exchanged, October 21, 1914

The President of the United States of America and His Majesty the King of Norway, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States, William Jennings Bryan, Secretary of State of the United States; and

His Majesty the King of Norway, H. H. Bryn, Envoy Extraordinary and Minister Plenipotentiary of Norway to the United States;

Who, after having communicated to each other their respective full

¹ U. S. Treaty Series, No. 599.

powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them of every nature whatsoever shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent international commission; provided, however, that treaties in force between the two parties do not prescribe settlement by arbitration of such disputes.

The commission shall be constituted in the manner prescribed in the next succeeding article.

The high contracting parties agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country by the government thereof; one member shall be chosen by each government from some third country; the fifth member, who shall be the chairman of the commission, shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country nor a resident in either of them. If an agreement is not reached as to this appointment, the fifth member shall be chosen according to the rules laid down in Art. 87 of the Convention signed at The Hague on October 18, 1907, for the Peaceful Settlement of International Disputes.

The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed within four months after the exchange of the ratifications of this treaty; vacancies to be filled according to the manner of the original appointment.

Unless otherwise agreed between the parties, the procedure of the international commission shall be regulated by the prescriptions contained in Chapter III of the convention mentioned above.

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, and the dispute is not to be settled by

arbitration, the parties shall at once refer it to the international commission for investigation and report.

The international commission may, however, spontaneously offer its services to that effect, and in such case it shall notify both governments and request their coöperation in the investigation.

The high contracting parties agree to furnish the permanent international commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed as soon as possible and at the latest within one year after the date on which the commission shall declare its investigation to have begun, unless the high contracting parties shall extend or limit the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

ARTICLE IV

The high contracting parties agree that, upon the receipt of the report of the international commission, they will immediately endeavor to adjust the dispute directly between them upon the basis of the commission's findings. They reserve, however, the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE V

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Norway.

The ratifications shall be exchanged at Washington as soon as possible. The treaty shall take effect immediately after the exchange of ratifications and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in duplicate, in the English and Norwegian languages, at Washington, this 24th day of June, 1914.

[SEAL.] WILLIAM JENNINGS BRYAN.

[SEAL.] HELMER H. BEYN.

Signed at Asuncion, August 29, 1914; ratifications exchanged, March 9, 1915

The United States of America and the Republic of Paraguay, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose and to that end have appointed as their plenipotentiaries:

The President of the United States, His Excellency Daniel F. Mooney, Envoy Extraordinary and Minister Plenipotentiary; and

The President of Paraguay, His Excellency D. Manuel Gondra, Minister of Foreign Relations;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:

· ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation, and before the report is submitted.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments. The expenses shall be paid by the two governments in equal proportion.

The international commission shall be appointed within the four months following the exchange of the ratifications of this treaty; and

¹ U. S. Treaty Series, No. 614.

vacancies shall be filled according to the manner of the original appointment.²

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report.

The international commission may, however, act upon its own initiative, and in such case it shall notify both governments and request their coöperation in the investigation.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have been initiated, unless the high contracting parties shall protract the term by mutual consent. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its archives.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Republic of Paraguay, with the approval of the Congress thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years, and it shall thereafter remain in force until one year after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Asuncion on the twenty-ninth of August, in the year of our Lord nineteen hundred and fourteen.

Daniel F. Mooney. [seal.] M. Gondra. [seal.]

² The time within which the organization of the commission may be completed was extended by an exchange of notes of November 16, 1915, from July 9, 1915 to January 15, 1916. (Treaty Series, No. 604-A.)

TREATY BETWEEN PERU AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Lima, July 14, 1914; ratifications exchanged, March 4, 1915

The United States of America and the Republic of Peru, with the earnest desire to strengthen their bonds of friendship and to contribute to the development of the spirit of universal peace, have resolved upon the celebration of a treaty containing the rules for the practice of these high proposals, and to that end have nominated as their plenipotentiaries:

The President of the United States, Benton McMillin, Envoy Extraordinary and Minister Plenipotentiary of the United States in Peru; and

The President of Peru, Doctor J. Fernando Gazzani, Minister of Foreign Relations;

Who, after having examined their full powers, which were found in due form, have agreed upon the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to an international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The international commission shall be composed of five members, two named by each one of the respective governments and one named jointly by them. The designations made by each government can only devolve one on a citizen of the state itself and the other on a citizen of a third country. The designation of the fifth member can not devolve upon a citizen of either of the two interested nations.

Each of the high contracting parties reserves to itself the right to

¹ U. S. Treaty Series, No. 613.

withdraw its two commissioners, or one of them, before the initiation of the investigations, and, within the same period, to withdraw its agreement to the joint designation of the fifth member. In these cases, they shall proceed to replace them according to the forms above laid down.

During the period of investigation the commissioners shall receive such pecuniary compensation as shall be agreed upon by the high contracting parties.

The commission, whose expenses shall be met in equal parts by the two governments, shall be appointed a short time after the exchange of the ratifications of the treaty; and to provide for possible vacancies on it, the same rules shall be applied as in the original designations.

ARTICLE III

The questions which divide the high contracting parties should they be incapable of solution by diplomatic means, shall be submitted immediately to the international commission for its investigation and report.

The international commission may, however, by unanimous agreement, spontaneously offer its services to that effect, and in such case it shall notify both governments, and request their coöperation in the investigation.

The high contracting parties agree to furnish the international commission all means and all facilities for the investigation and report.

The report shall be presented in the maximum period of one year, but the high contracting parties, by mutual accord, may shorten or extend this period. The report shall appear in three copies.

The commission shall reserve one of the copies for its archives and deliver the other two to the governments interested.

The high contracting parties reserve the right to act independently in the question dealt with in the investigations after the issue of the report.

ARTICLE IV

The ratifications of this treaty shall be made by the President of the United States of America by and with the advice and consent of the Senate; and by the President of Peru if the legislative power shall give its approval in conformity with the constitution and the laws. The exchange of ratifications shall take place as soon as possible, and immediately afterward this treaty shall take effect for a period of five years, at the end of which it will remain in effect until twelve months after the

day on which one of the Parties advises the other of its intention of terminating it.

In witness whereof, we the respective plenipotentiaries have signed the present treaty, in duplicate, in the English and Spanish languages and have hereunto affixed our respective seals.

Done at Lima the fourteenth day of July, in the year of our Lord one thousand nine hundred and fourteen.

BENTON McMillin. [SEAL.]
J. FERNANDO GAZZANI. [SEAL.]

TREATY BETWEEN PORTUGAL AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Lisbon, February 4, 1914; ratifications exchanged, October 24, 1914

The President of the United States of America and the President of the Portuguese Republic, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their Plenipotentiaries:

The President of the United States of America: His Excellency Colonel Thomas H. Birch, Envoy Extraordinary and Minister Plenipotentiary of the United States of America near the Portuguese Republic;

The President of the Portuguese Republic: His Excellency Dr. António Caetano Macieira Júnior, Minister for Foreign Affairs;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

¹ U. S. Treaty Series, No. 600.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country. The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed within six months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.²

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, spontaneously offer its services to that effect, and in such case it shall notify both governments and request their coöperation in the investigation.

The high contracting parties agree to furnish the permanent international commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate

² The time within which the organization of the commission may be completed was extended by an exchange of notes of November 16, 1915, from April 24, 1915, to April 24, 1916. (Treaty Series, No. 600-A.)

thereof; and by the President of the Portuguese Republic in accordance with the constitutional laws of the Republic; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in duplicate, in the English and Portuguese languages, at Lisbon, this 4th day of February one thousand nine hundred and fourteen.

[SEAL.] Thos. H. Birch.

[SEAL.] ANTONIO CAETANO MACIEIRA, JÚNIOR.

TREATY BETWEEN RUSSIA AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, October 1/September 18, 1914; ratifications exchanged, March 22, 1915

The President of the United States of America and His Majesty the Emperor of all the Russias, desiring to strengthen the friendly relations which unite their countries and to serve the cause of general peace, have decided to conclude a treaty for these purposes and have consequently appointed their plenipotentiaries designated hereinafter, to wit:

The President of the United States of America, the Honorable William Jennings Bryan, Secretary of State of the United States; and

His Majesty the Emperor of all the Russias, His Excellency G. Bakhmeteff, Master of His Court and His Ambassador Extraordinary and Plenipotentiary to the United States of America;

Who, after exhibiting to each other their full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

Any differences arising between the Government of the United States of America and the Imperial Government of Russia, of whatever nature they may be, shall, when diplomatic proceedings have failed, be sub-

¹ U. S. Treaty Series, No. 616.

mitted for examination and report to a permanent international commission constituted in the manner prescribed in the following articles; likewise the high contracting parties agree not to resort, with respect to each other, to any acts of force during the examination to be made by the commission and before its report is handed in.

ARTICLE II

The international commission shall be composed of five members appointed as follows: each government shall designate two members; the fifth member shall be designated by common consent and shall not belong to any of the nationalities already represented on the commission; he shall perform the duties of president.

The two governments shall bear by halves the expenses of the commission.

The commission shall be organized within six months from the exchange of ratifications of the present convention.

The members shall be appointed for one year and their appointment may be renewed. They shall remain in office until superseded or reappointed, or until the work on which they are engaged at the time their office expires is completed.

Any vacancies which may arise shall be filled in the manner followed for the original appointment.

ARTICLE III

In case a difference should arise between the high contracting parties which is not settled by diplomatic methods, each party shall have a right to ask that the examination thereof be intrusted to the international commission charged with making a report. Notice shall be given to the president of the international commission, who shall at once communicate with his colleagues.

As regards the procedure which it is to follow, the commission shall as far as possible be guided by the provisions contained in Articles 9 to 36 of Convention 1 of The Hague of 1907.

The high contracting parties agree to afford the commission, as fully as they may think possible, all means and all necessary facilities for its examination and its report.

The work of the commission shall be completed within one year from the date on which it has taken jurisdiction of the case, unless the high contracting parties should agree to set a different period. The conclusion of the commission and the terms of its report shall be adopted by a majority. The report, signed only by the president acting by virtue of his office, shall be transmitted by him to each of the contracting parties.

The high contracting parties reserve full liberty as to the action to be taken on the report of the commission.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, with the advice and consent of the Senate of the United States, and by His Majesty the Emperor of all the Russias.

It shall go into force immediately after the exchange of ratifications and shall last five years.

If it has not been denounced at least six months before the expiration of this period it shall be tacitly renewed for a period of twelve months after either party shall have notified the other of its intention to terminate it.

In witness whereof, the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington this ^{1 October}, 1914.

[SEAL.] WILLIAM JENNINGS BRYAN. [SEAL.] G. BAKHMÉTEFF.

TREATY BETWEEN SPAIN AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{1}}$

Signed at Washington, September 15, 1914; ratifications exchanged December 21, 1914.

The President of the United States of America and His Majesty the King of Spain, desiring to strengthen the friendly relations which unite their two countries and to serve the cause of general peace, have decided to conclude a treaty for these purposes and have consequently appointed the plenipotentiaries designated hereinafter, to-wit:

The President of the United States of America, the Honorable William Jennings Bryan, Secretary of State of the United States; and

His Majesty the King of Spain, His Excellency Señor Don Juan Riaño y Gayangos, His Ambassador in Washington;

¹ U. S. Treaty Series, No. 605.

Who, after exhibiting to each other their full powers, found to be in due and proper form, have agreed upon the following articles:

ARTICLE 1

Any disputes arising between the Government of the United States of America and the Government of Spain, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the high contracting parties do not have recourse to arbitration, be submitted for investigation and report to a permanent international commission constituted in the manner prescribed in the following article.

The high contracting parties agree not to resort, with respect to each other, to any act of force during the investigation to be made by the commission and before its report is handed in.

ARTICLE 2

The international commission shall be composed of five members appointed as follows: each government shall designate two members, only one of whom shall be of its own nationality; the fifth member shall be designated by common consent and shall not belong to any of the nationalities already represented on the commission; he shall perform the duties of president.

In case the two governments should be unable to agree on the choice of the fifth commissioner, the other four shall be called upon to designate him, and failing an understanding between them, the provisions of Article 45 of The Hague Convention of 1907 shall be applied.

The commission shall be organized within six months from the exchange of ratifications of the present convention.²

The members shall be appointed for one year and their appointment may be renewed. They shall remain in office until superseded or reappointed, or until the work on which they are engaged at the time their office expires is completed.

Any vacancies which may arise (from death, resignation, or cases of physical or moral incapacity) shall be filled within the shortest possible period in the manner followed for the original appointment.

The high contracting parties shall, before designating the commis-

² The time within which the organization of the commission may be completed was extended by an exchange of notes of November 16, 1915, from June 21, 1915, to February 15, 1916. (Treaty Series, No. 605-A.)

sioners, reach an understanding in regard to their compensation. They shall bear by halves the expenses incident to the meeting of the commission.

ARTICLE 3

In case a dispute should arise between the high contracting parties which is not settled by the ordinary methods, each party shall have a right to ask that the investigation thereof be intrusted to the international commission charged with making a report. Notice shall be given to the president of the international commission, who shall at once communicate with his colleagues.

In the same case the president may, after consulting his colleagues and upon receiving the consent of a majority of the members of the commission, offer the services of the latter to each of the contracting parties. Acceptance of that offer declared by one of the two governments shall be sufficient to give jurisdiction of the case to the commission in accordance with the foregoing paragraph.

The place of meeting shall be determined by the commission itself.

ARTICLE 4

The two high contracting parties shall have a right, each on its own part, to state to the president of the commission what is the subject-matter of the controversy. No difference in these statements, which shall be furnished by way of suggestion, shall arrest the action of the commission.

ARTICLE 5

As regards the procedure which it is to follow, the commission shall as far as possible be guided by the provisions contained in Articles 9 to 36 of Convention 1 of The Hague of 1907.

The high contracting parties agree to afford the commission all means and all necessary facilities for its investigation and report.

The work of the commission shall be completed within one year from the date on which it has taken jurisdiction of the case, unless the high contracting parties should agree to set a different period.

The conclusion of the commission and the terms of its report shall be adopted by a majority. The report, signed only by the president acting by virtue of his office, shall be transmitted by him to each of the contracting parties. The high contracting parties reserve full liberty as to the action to be taken on the report of the commission.

ARTICLE 6

The present treaty shall be ratified by the President of the United States of America, with the advice and consent of the Senate of the United States, and by His Majesty the King of Spain.

It shall go into force immediately after the exchange of ratifications and shall last five years.

Unless denounced six months at least before the expiration of the said period of five years, it shall remain in force until the expiration of a period of twelve months after either party shall have notified the other of its intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington this 15th day of September, in the year nineteen hundred and fourteen.

[SEAL.] WILLIAM JENNINGS BRYAN.

[SEAL.] JUAN RIAÑO Y GAYANGOS.

Signed at Washington, October 13, 1914; ratifications exchanged January 11, 1915

The President of the United States of America and His Majesty the King of Sweden, desiring to strengthen the friendly relations which unite their two countries and to serve the cause of general peace, have decided to conclude a treaty for these purposes and have consequently appointed the plenipotentiaries designated hereinafter, to-wit:

The President of the United States of America, the Honorable William Jennings Bryan, Secretary of State of the United States; and

His Majesty the King of Sweden, Mr. W. A. F. Ekengren, His Envoy Extraordinary and Minister Plenipotentiary at Washington;

Who, after exhibiting to each other their full powers, found to be in due and proper form, have agreed upon the following articles:

¹ U. S. Treaty Series, No. 607.

Any disputes arising between the Government of the United States of America and the Government of His Majesty the King of Sweden, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the high contracting parties do not have recourse to arbitration, be submitted for investigation and report to a permanent international commission constituted in the manner prescribed in the following article.

The high contracting parties agree not to resort, with respect to each other, to any act of force during the investigation to be made by the commission and before its report is handed in.

ARTICLE 2

The international commission shall be composed of five members appointed as follows: each government shall designate two members, only one of whom shall be of its own nationality; the fifth member shall be designated by common consent and shall not belong to any of the nationalities already represented on the commission; he shall perform the duties of president.

In case the two governments should be unable to agree on the choice of the fifth commissioner, the other four shall be called upon to designate him, and failing an understanding between them, the provisions of Article 45 of The Hague Convention of 1907 shall be applied.

The commission shall be organized within six months from the exchange of ratifications of the present convention.²

The members shall be appointed for one year and their appointment may be renewed. They shall remain in office until superseded or reappointed, or until the work on which they are engaged at the time their office expires is completed.

Any vacancies which may arise (from death, resignation, or cases of physical or moral incapacity) shall be filled within the shortest possible period in the manner followed for the original appointment.

The high contracting parties shall, before designating the commissioners, reach an understanding in regard to their compensation. They shall bear by halves the expenses incident to the meeting of the commission.

² The time within which the organization of the commission may be completed was extended by an exchange of notes of November 16, 1915, from July 11, 1915, to January 15, 1916. (Treaty Series, No. 607-A.)

Differences that may happen to occur between the high contracting parties and should fail of settlement by diplomatic methods shall be forthwith referred to the examination of the international commission which will undertake to make a report. By a note addressed to the International Bureau of the Permanent Court at The Hague, which shall communicate it without delay to both governments, the president may remind the parties that the services of the international commission are at their disposal.

ARTICLE 4

The two high contracting parties shall have a right, each on its own part, to state to the president of the commission what is the subject-matter of the controversy. No difference in these statements, which shall be furnished by way of suggestion, shall arrest the action of the commission.

In case the cause of the dispute should consist of certain acts already committed or about to be committed, the commission shall as soon as possible indicate what measures to preserve the rights of each party ought in its opinion to be taken provisionally and pending the delivery of its report.

ARTICLE 5

As regards the procedure which it is to follow, the commission shall as far as possible be guided by the provisions contained in Articles 9 to 36 of Convention 1 of The Hague of 1907.

The high contracting parties agree to afford the commission all means and all necessary facilities for its investigation and report.

The work of the commission shall be completed within one year from the date on which it has taken jurisdiction of the case, unless the high contracting parties should agree to set a different period.

The conclusion of the commission and the terms of its report shall be adopted by a majority. The report, signed only by the president acting by virtue of his office, shall be transmitted by him to each of the contracting parties.

The high contracting parties reserve full liberty as to the action to be taken on the report of the commission.

The present treaty shall be ratified by the President of the United States of America, upon his being authorized thereto by the American Senate, and by His Majesty the King of Sweden.

The ratifications shall be exchanged at Washington as soon as possible and the treaty shall go into force on the day of the exchange of ratifications.

Its duration shall be five years counted from the exchange of ratifications.

Unless denounced six months at least before the expiration of the said period it shall continue by tacit renewal for another period of five years and so on in periods of five years unless denounced.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done at Washington this 13th day of October, in the year nineteen hundred and fourteen.

[SEAL.] WILLIAM JENNINGS BRYAN. [SEAL.] W. A. F. EKENGREN.

TREATY BETWEEN URUGUAY AND THE UNITED STATES FOR THE ADVANCEMENT OF PEACE $^{\mathrm{I}}$

Signed at Washington, July 20, 1914; ratifications exchanged, February 24, 1915

The United States of America and the Oriental Republic of Uruguay, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and

The President of Uruguay, his Envoy Extraordinary and Minister Plenipotentiary to the United States, Señor Dr. Don Carlos Maria de Pena;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

¹ U. S. Treaty Series, No. 611.

ARTICLE I

The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The international commission shall be composed of five members, to be appointed as follows: one member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country. Each of the high contracting parties shall have the right to remove, at any time before investigation begins, any commissioner selected by it and to name his successor, and under the same conditions shall also have the right to withdraw its approval of the fifth commissioner selected jointly; in which case a new commissioner shall be selected jointly as in the original selection. The commissioners shall, when actually employed in the investigation of a dispute, receive such compensation as shall be agreed upon by the high contracting parties. The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed as soon as possible after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

ARTICLE III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, by unanimous agreement spontaneously offer its services to that effect, and in such case it shall notify both governments and request their cooperation in the investigation.

The high contracting parties agree to furnish the permanent inter-

national commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government and the third retained by the commission for its files:

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of Uruguay, in accordance with the constitution and laws thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the 20th day of July, in the year nineteen hundred and fourteen.

WILLIAM JENNINGS BRYAN. [SEAL.] CÁRL^o M^o de Pena. [SEAL.]

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